UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed November 16, 2000, 12:00 a.m. through December 1, 2000, 11:59 p.m.

Number 2000-24
December 15, 2000

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

EXECUTIVE ORDER

WHEREAS, during water year 1999, ended October 1, 2000, severe drought conditions persisted more or less unabated throughout the state of Utah, presenting a serious threat to animal life, private property, agriculture, and the economy;

WHEREAS, despite recent precipitation, previously existing drought conditions have adversely impacted and will continue to adversely impact agricultural producers and the water needs of the residents of the state;

WHEREAS, Utah, along with other western states, had one of the worst wildfire seasons on record during summer and fall 2000, severely straining state and local resources;

WHEREAS, water supply shortages and severe depletion of soil moisture during summer 2000 affected the entire state of Utah;

WHEREAS, the effect of excessively high temperatures and severe winds further depleted limited moisture and damage by frost in the early growing season, lowering production;

WHEREAS, Utah also experienced unusual and serious crop and range damage during 2000 from Mormon Crickets, grasshoppers, and rodents;

WHEREAS, livestock producers in many rural counties of the state were forced to remove their cattle from summer ranges much earlier than usual, and lands historically used for winter ranges have not produced a sufficient amount of forage to sustain normal numbers of cattle and wildlife;

WHEREAS, many livestock producers are faced with liquidation and excessive winter feeding costs, and wildlife populations are at risk;

WHEREAS, the situation has the potential to greatly worsen if left unattended;

WHEREAS, immediate action is required to protect public health and safety, public and private property, agriculture and the environment; and

WHEREAS, these conditions warrant relief through the United States Department of Agriculture, accessing livestock assistance emergency funds, low interest loans, emergency grazing of CRP lands, and other available assistance and, in addition, constitute a disaster emergency, thereby justifying implementation of the Disaster Response and Recovery Act of 1981;

NOW, THEREFORE, I, Michael O. Leavitt, Governor of the State of Utah by virtue of the power vested in me by the constitution and the laws of the State of Utah, find, determine, and declare that a "State of Emergency" exists statewide due to the impacts of drought conditions and wildfire damage. This state of emergency is declared to be a disaster requiring aid, assistance, and relief available pursuant to the provisions of state and federal statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have here unto set my hand and cause to be affixed the Great Seal of the State of Utah this 22nd day of November, 2000.

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

Attest:
OLENE WALKER
Lieutenant Governor

P R O C L A M A T I O N

I, MICHAEL O. LEAVITT, Governor of the State of Utah, pursuant to the requirements of Sections 20A-7-211 and 20A-7-212 of the Utah Code, proclaim as follows:

1. Initiative A, English as the Official Language of Utah, was approved by a majority of the voters of the state at the 2000 General Election with a vote of 496,066 in favor and 242,311 against. That result was certified by the lieutenant governor on November 28, 2000. The law proposed by Initiative A shall take full force and effect as the law of the state of Utah five days after the issuance of this proclamation in accordance with Section 20A-7-212.

2. Initiative B, Utah Property Protection Act, was approved by a majority of the voters of the state at the 2000 General Election with a vote of 500,439 in favor and 225,264 against. That result was certified by the lieutenant governor on November 28, 2000. The law proposed by Initiative B shall take full force and effect as the law of the state of Utah on March 20, 2001, in accordance with the effective date provided in the initiative.

IN WITNESS WHEREOF, I have here unto set my hand and cause to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 28th day of November, 2000.

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

Attest:
OLENE S. WALKER
Lieutenant Governor

DEPARTMENT OF COMMERCE

PUBLIC HEARING ON PROPOSED FEES FOR SERVICES PROVIDED AND COSTS INCURRED BY THE DEPARTMENT OF COMMERCE DURING FISCAL YEAR 2002

The Department of Commerce will hold a hearing on Friday, December 22, 2000, at 9:00 a.m. at the Heber M. Wells Building, 160 East 300 South, Room 205, Salt Lake City, Utah.

The purpose of the hearing is to obtain public comment on proposed fees which could to be assessed for services provided and costs which would be incurred by the Department during Fiscal Year 2002. Subsection 63-38-3.2(2)(b) of the Budgetary Procedures Act provides that an agency shall conduct a public hearing on any proposed regulatory fee.

Background: Various divisions of the Department assess fees for licensure, registration, or certification of individuals and businesses to engage in certain occupations and professions. Many existing fees are unchanged in the proposed fee schedule which has been prepared for consideration by the Legislature during its 2001 General Session. Copies of those schedules will be distributed at the December 22, 2000, hearing.

For further information, please contact Klare Bachman at (801) 530-6702.

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. 00-24, dated November 27, 2000 (http://www.state.lib.ut.us/00-24.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 November 16, 2000, 12:00 a.m., and December 1, 2000, 11:59 p.m., are included in this, the December 15, 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 January 15, 2001. 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 April 14, 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.

Administrative Services, Finance
R25-14
Payment of Attorneys Fees in Death Penalty Cases

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23366
FILED: 12/01/2000, 08:59
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After three years of experience and discussions with legal professionals it was determined that some of the limits in the original rule for fees and expenses should be increased.

SUMMARY OF THE RULE OR CHANGE: The rule was amended to: increase the amount of the fee paid in Subsection R25-14-4(3) from $5,000 to $10,000; and increase the amount of the fee paid in Section R25-14-5 from $10,000 to $20,000.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 78-35a-202

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Amending the rule will not result in a cost or saving to the state budget because current funding levels are anticipated to be adequate.
❖LOCAL GOVERNMENTS: This rule applies only to legal counsel appointed to represent indigent persons in death penalty cases and therefore will have no impact on local government.
❖OTHER PERSONS: If additional income can be considered a savings, then attorneys appointed to represent indigent persons in death penalty cases could benefit from the increase in allowable fees and expenses which results from the amendments to this rule.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs connected with the revisions to Section R24-14.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be a positive impact on the legal profession by increasing allowable fees and expenses paid to legal counsel appointed to represent indigent persons in death penalty cases.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Administrative Services
Finance
2110 State Office Building
PO Box 141031
Salt Lake City, UT 84114-1031, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Teddy Cramer at the above address, by phone at (801) 538-3450, by FAX at (801) 538-3244, or by Internet E-mail at tcramer@fi.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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Kim S. Thorne, Director

R25. Administrative Services, Finance.
R25-14. Payment of Attorneys Fees in Death Penalty Cases.

. . . . . .

R25-14-4. Schedule of Payments of Attorneys Fees.

All counsel appointed to jointly represent a single client shall be paid, in the aggregate, according to the following schedule of payments upon certification to the Division of Finance that the specified legal service was performed or the specified events have occurred:

(1) $5,000.00 upon appointment by the district court and presentation of a signed Request for Payment to the Division of Finance.

(2) $5,000.00 upon timely filing a petition for post-conviction relief.

(3) $[~~5,000.00~~]10,000.00 after all discovery has been completed, all prehearing motions have been ruled upon, and a date for an evidentiary hearing has been set.

(4) If an evidentiary hearing is required, $5,000.00 on the date the first witness is sworn.

(5) $7,500.00 if an appeal is filed from a final order of the district court. $5,000.00 of the total shall be paid when the brief on behalf of the indigent person is filed and $2,500.00 when the Utah Supreme Court finally remits the case to the district court.

(6) An additional fee of $100 per hour, but in no event to exceed $5,000.00 in the aggregate, shall be paid if:

(a) counsel satisfy the requirements of Rule 4-505, Utah Code of Judicial Administration; and

(b) the district court finds:

(i) that the appointed counsel provided extraordinary legal services that were not reasonably foreseeable at the time of accepting the appointment, such as responding to or filing a petition for interlocutory appeal, and

(ii) the services were both reasonable and necessary for the presentation of the client's claims.

(c) These additional fees shall be paid upon approval by the district court and compliance with the provisions of this rule.

R25-14-5. Payment of Reasonable Litigation Expenses.

The Division of Finance shall pay reasonable litigation expenses not to exceed a total of $[~~10,000.00~~]20,000.00 in any one case for court approved investigators, expert witnesses, and

consultants. Before payment is made for litigation expenses, the appointed counsel must submit a request for payment to the Division of Finance including:

(1) a detailed invoice of all expenses for which payment is requested; and

(2) written approval of the district court certifying that the expenses were both reasonable and necessary for the presentation of the client's claims.

. . . . . .

KEY: attorneys, fees, capital punishment, post-conviction*
[~~September 15, 1997~~]January 16, 2001 78-35a-202

Administrative Services, Fleet Operations
R27-7
Safety and Loss Prevention of State Vehicles

NOTICE OF PROPOSED RULE
(New)
DAR FILE NO.: 23345
FILED: 11/30/2000, 09:09
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To establish standards for the safety and loss prevention of State vehicles.

SUMMARY OF THE RULE OR CHANGE: This rule describes what must be done if a State employee is involved in an accident, requires agencies that are leasing vehicles to maintain an Accident Review Committee, describes when smoking in state vehicles is permitted, prohibits drinking and drug use in and/or while operating a State vehicle, and addresses other safety measures.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6-182 and Subsection 63-30-36(3)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There is no way to make an estimate, due to the fact the fees are only charged if the person using the vehicle does not follow the standards set forth with the rule.
❖LOCAL GOVERNMENTS: The State does not control local government fleet.
❖OTHER PERSONS: There are no cost-related activities or savings to other persons. The rule assesses charges only against the leasing agency.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Possible cleaning fees for smoking in a State vehicle.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This measure is for State Fleet users only. The local business community is not affected. Raylene Ireland

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Administrative Services
Fleet Operations
4120 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Alison Taylor at the above address, by phone at (801) 538-3306, by FAX at (801) 538-1773, or by Internet E-mail at ataylor@fo.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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Steve Saltzgiver, Director

R27. Administrative Services, Fleet Operations.
R27-7. Safety and Loss Prevention of State Vehicles.
R27-7-1. Authority.

(1) Pursuant to Subsection 63A-9-401(1)(c)(viii), the Division of Fleet Operations shall be responsible for establishing requirements governing business and personal uses including commute and travel standards, safety and loss preventions programs, preventive maintenance programs, billing standards, reassignment and relocation of state vehicles.

(2) This rule defines safety and loss prevention standards and programs.

R27-7-2. Accident Reporting and Liability.

(1) In the event of an accident, the driver shall follow all steps in the "What To Do If You Are Involved In An Accident" motor pool guide, and the Division of Fleet Operations booklet "The State Motor Pool/Vehicle Use Rules", located in the glove box of each State vehicle, unless the accident renders the driver incapable, in which case an agency representative shall respond.

(2) Official notification of the accident or incident must be given.

(a) Driver shall notify direct supervisor immediately following any and all accidents or incidents involving vehicles or personal vehicles being used to conduct state business.

(b) Fleet Operations shall be notified within three working days following any and all accidents or incidents involving State vehicles. The driver shall fill-out an accident report, provided by Fleet Operations on-line at http://fleet.state.ut.us. The report shall be completed with detailed information regarding the accident/incident. The report may be fill-out and sent on-line or in hard copy.

(c) In the event of injury due to an accident or incident, Risk Management and the driver's supervisor shall be notified immediately.

R27-7-3. Accident Review Committee (ARC).

(1) Each agency leasing vehicles from the Division of Fleet Operations shall maintain an Accident Review Committee (ARC). The ARC shall conduct quarterly reviews of all accidents, incidents and complaints involving State operators in either state or personal vehicles while being used to conduct state business.

(2) The purpose of the ARC is to reduce the number of state accidents, incidents and complaints connected with state operators.

(3) The ARC shall determine through a review process, if the accident was preventable or non-preventable.

(4) The ARC shall determine if the operator should be reprimanded. If it is determined that the operator was at fault in the incident the ARC shall recommend a course of disciplinary action.

R27-7-4. Alcohol and Drugs.

(1) No individual shall operate a State vehicle or personal vehicle being used to conduct state business after the consumption of alcohol or any drug pursuant to Subsections 41-6-44(2) and 63-30-36(3). Any violation of this rule shall result in the loss of state driving privileges.

(2) Any state vehicle operator who is convicted of Driving Under the Influence (DUI) while off duty shall be required to attend a defensive driving course before being allowed to operate a State vehicle or a personal vehicle to conduct state business.

(3) State vehicle operators shall report any suspension of their driver licences to their supervisor. Failure to report the suspension shall result in the suspension of State driving privileges.

(4) No State vehicle operator shall transport alcohol or illegal drugs of any type in a State vehicle or personal vehicle while conducting state business, unless they are involved in the following:

(a) Sworn law enforcement officers in process of investigating criminal activities;

(b) Employees of the Alcoholic Beverage Control Commission conducting business within the guidelines of their daily operation.

R27-7-5. Seat Restraint Use.

(1) All operators and passengers in State vehicles shall wear seat belt restraints while in a moving vehicle.

(2) All children being transported in State vehicles shall be placed in proper safety restraints for their age and size as stated in Subsection 41-6-148.20.2(a).

R27-7-6. Defensive Driving.

(1) Any state employee, volunteer, intern, higher education faculty, staff or student that will be operating a State vehicle shall complete a defensive driving course offered through the Division of Risk Management, prior to the use of a state vehicle.

(a) Certification shall be placed in the operator's employee file.

(b) Certification shall be renewed bi-yearly.

(2) Agencies shall maintain a list of all employees who have completed the defensive driving course.

(3) Any operators of State vehicles who are involved in a traffic accident or ticketed for a moving violation, shall attend an additional defensive driving course within one month of the incident. Failure to attend the additional course shall result in a loss of driving privileges. The operator or the operator's agency shall be responsible for paying fines associated with any and all tickets for moving violations or improper parking. Failure to pay fines associated with tickets will result in the loss of state driving privileges.

R27-7-7. Smoking in State Vehicles.

(1) All multiple-user state vehicles are designated as "nonsmoking". Departments shall be assessed fees for any damage incurred by smoking in vehicles.

(2) Departments which allow smoking in exclusive use vehicles, which are leased or purchased in this category, shall be held responsible for the cost to repair any damage or refurbishment as needed to insure the vehicle is suitable to be reissued or sold when the vehicle reaches the criteria for replacement.

R27-7-8. Loaner Vehicles.

(1) In the event of an accident or major mechanical repair to a long-term leased vehicle, operators may request a loaner vehicle from the Motor Pool.

(a) The loaner vehicle will come from the daily rental pool. The operator's agency shall pay all variable costs while the vehicle is in their possession.

(b) The operator shall return the loaner vehicle within 24 hours of the completion of repairs to the long-term leased vehicle.

(c) The operator's agency shall be charged the daily rental rate for any loaner vehicle not returned within the 24-hour deadline.

KEY: accidents, incidents, tickets, ARC
2001 **63A-9-401(1)(c)(viii)**

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Commerce, Real Estate
R162-6
Licensee Conduct

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23343
FILED: 11/29/2000, 15:36
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To correct the names and effective dates of approved real estate forms.

SUMMARY OF THE RULE OR CHANGE: The correct names and effective dates of various approved real estate forms are replaced.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2-5.5

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The rule change is nonsubstantive; only the names and effective dates of various forms are corrected, therefore, there is no effect upon state budget.
❖LOCAL GOVERNMENTS: The rule change is nonsubstantive; only the names and effective dates of various forms are corrected, therefore, there is no effect upon local government.
❖OTHER PERSONS: The rule change is nonsubstantive; only the names and effective dates of various forms are corrected, therefore, there is no effect upon other persons.
COMPLIANCE COSTS FOR AFFECTED PERSONS: No change; the change only affects the names and effective dates of approved real estate forms.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The only purpose of this proposed rule amendment is to change the name and effective dates of various approved real estate forms and will generate no fiscal impact upon the regulated profession.

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

Commerce
Real Estate
Second Floor, Heber Wells Building
160 East 300 South
PO Box 146711
Salt Lake City, UT 84114-6711, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Karen Post at the above address, by phone at (801) 530-6753, by FAX at (801) 530-6749, or by Internet E-mail at kpost@br.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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Theodore "Ted" Boyer, Jr., Director

R162. Commerce, Real Estate.
R162-6. Licensee Conduct.

• • • • • • • • • • •

R162-6-2. Standards of Practice.

6.2.1. Approved Forms. The following standard forms are approved by the Utah Real Estate Commission and the Office of the Attorney General for use by all licensees:

(a) September 30, 1999, Real Estate Purchase Contract (mandated use of this form is July 1, 2000;

(b) [~~January 1, 1999~~]August 17, 1998, Real Estate Purchase Contract for Residential Construction;

(c) January 1, 1987, Uniform Real Estate Contract;

(d) October 1, 1983, All Inclusive Trust Deed;

(e) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(f) [~~January 1, 1999~~]August 17, 1998, Addendum/Counteroffer to Real Estate Purchase Contract;

(g) [~~January 1, 1999~~]August 17, 1998, Seller Financing Addendum to Real Estate Purchase Contract;

(h) [~~January 1, 1999~~]August 17, 1998, Survey Addendum to Real Estate Purchase Contract;

(i) [~~January 1, 1999~~]June 12, 1996, Buyer Financial Information Sheet;

(j) [~~January 1, 1999~~]December 29, 1998, FHA/VA Loan Addendum to Real Estate Purchase Contract;

(k) [~~January 1, 1999~~]June 12, 1996, Assumption Addendum to Real Estate Purchase Contract;

(l) [~~January 1, 1999~~]May 17, 1998, Lead-based Paint Addendum to Real Estate Purchase Contract;

(m) [~~January 1, 1999~~]July 10, 1996, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

6.2.1.1. Forms Required for Closing. Principal brokers and associate brokers may fill out forms in addition to the standard state-approved forms if the additional forms are necessary to close a transaction. Examples include closing statements, and warranty or quit claim deeds.

6.2.1.2. Forms Prepared by an Attorney. Any licensee may fill out forms prepared by the attorney for the buyer or lessee or the attorney for the seller or lessor to be used in place of any form listed in R162-6.2.1 (a) through (g) if the buyer or lessee or the seller or lessor requests that other forms be used and the licensee verifies that the forms have in fact been drafted by the attorney for the buyer or lessee, or the attorney for the seller or lessor.

6.2.1.3. Additional Forms. If it is necessary for a licensee to use a form for which there is no state-approved form, for example, the licensee may fill in the blanks on any form which has been prepared by an attorney, regardless of whether the attorney was employed for the purpose by the buyer, seller, lessor, lessee, brokerage, or an entity whose business enterprise is selling blank legal forms.

6.2.1.4. Standard Supplementary Clauses. There are Standard Supplementary Clauses approved by the Utah Real Estate Commission which may be added to Real Estate Purchase Contracts by all licensees. The use of the Standard Supplementary Clauses will not be considered the unauthorized practice of law.

6.2.2. Copies of Agreement. After a purchase agreement is properly signed by both the buyer and seller, it is the responsibility of each participating licensee to cause copies thereof, bearing all signatures, to be delivered or mailed to the buyer and seller with whom the licensee is dealing. The licensee preparing the document shall not have the parties sign for a final copy of the document prior to all parties signing the contract evidencing agreement to the terms thereof. After a lease is properly signed by both landlord and tenant, it is the responsibility of the principal broker to cause copies of the lease to be delivered or mailed to the landlord or tenant with whom the brokerage or property management company is dealing.

6.2.3. Residential Construction Agreement. The [~~Earnest Money Sales Agreement~~]Real Estate Purchase Contract for Residential Construction must be used for all transactions for the construction of dwellings to be built or presently under construction for which a Certificate of Occupancy has not been issued.

6.2.4. Employee Licensee. A real estate licensee working as a regular salaried employee as defined in section 1 of these rules, who sells real estate owned by the employer or leases real estate owned by the employer, may only do so and may only be compensated directly by the employer under one of the following conditions: (1) the licensee is a principal broker; (2) the employer has on its staff a principal broker with whom the licensee affiliates for sales or management transactions; or (3) the employer contracts with a principal broker so that all employed licensees are affiliated with and supervised by a principal broker.

6.2.5. Real Estate Auctions. A principal broker who contracts or in any manner affiliates with an auctioneer or auction company which is not licensed under the provisions of Section 61-2-1 et seq. for the purpose of enabling that auctioneer or auction company to auction real property in this state, shall be responsible to assure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions. Auctioneers and auction companies who are not licensed under the provisions of Section 61-2-1 et seq. may conduct auctions of real property located within this state upon the following conditions:

6.2.5.1. Advertising. All advertising and promotional materials associated with an auction must conspicuously disclose that the auction is conducted under the supervision of a named principal broker licensed in this state; and

6.2.5.2. Supervision. The auction must be conducted under the supervision of a principal broker licensed in this state who must be present at the auction; and

6.2.5.3. Use of Approved Forms. Any purchase agreements used at the auction must meet the requirements of Section 61-2-20 and must be filled out by a Utah real estate licensee; and

6.2.5.4. Placement of Deposits. All monies deposited at the auction must be placed either in the real estate trust account of the principal broker who is supervising the auction or in an escrow depository agreed to in writing by the parties to the transaction.

6.2.5.5. Closing Arrangements. The principal broker supervising the auction shall be responsible to assure that adequate arrangements are made for the closing of each real estate transaction arising out of the auction.

6.2.6. Guaranteed Sales. As used herein, the term "guaranteed sales plan" includes: (a) any plan in which a seller's real estate is guaranteed to be sold or; (b) any plan whereby a licensee or anyone affiliated with a licensee will purchase a seller's real estate if it is not purchased by a third party in the specified period of a listing or within some other specified period of time.

6.2.6.1. In any real estate transaction involving a guaranteed sales plan, the licensee shall provide full disclosure as provided herein regarding the guarantee:

(a) Written Advertising. Any written advertisement by a licensee of a "guaranteed sales plan" shall include a statement advising the seller that if the seller is eligible, costs and conditions may apply and advising the seller to inquire of the licensee as to the terms of the guaranteed sales agreement. This information shall be set forth in print at least one-fourth as large as the largest print in the advertisement.

(b) Radio/Television Advertising. Any radio or television advertisement by a licensee of a "guaranteed sales plan" shall include a conspicuous statement advising if any conditions and limitations apply.

(c) Guaranteed Sales Agreements. Every guaranteed sales agreement must be in writing and contain all of the conditions and other terms under which the property is guaranteed to be sold or purchased, including the charges or other costs for the service or plan, the price for which the property will be sold or purchased and the approximate net proceeds the seller may reasonably expect to receive.

6.2.7. Agency Disclosure. In every real estate transaction involving a licensee, as agent or principal, the licensee shall clearly disclose in writing to his respective client(s) or any unrepresented parties, his agency relationship(s). The disclosure shall be made prior to the parties entering into a binding agreement with each other. The disclosure shall become part of the permanent file.

6.2.7.1. When a binding agreement is signed in a sales transaction, the prior agency disclosure shall be confirmed in the currently approved Real Estate Purchase Contract or, with substantially similar language, in a separate provision incorporated in or attached to that binding agreement.

6.2.7.2. When a lease or rental agreement is signed, a separate provision shall be incorporated in or attached to it confirming the prior agency disclosure. The agency disclosure shall be in the form stated in R162-6.2.7.1, but shall substitute terms applicable for a rental transaction for the terms "buyer", "seller", "listing agent", and "selling agent".

6.2.7.3. Disclosure to other agents. An agent who has established an agency relationship with a principal shall disclose who he or she represents to another agent upon initial contact with the other agent.

6.2.8. Duty to Inform. Sales agents and associate brokers must keep their principal broker or branch broker informed on a timely basis of all real estate transactions in which the licensee is involved, as agent or principal, in which the licensee has received funds on behalf of the principal broker or in which an offer has been written.

6.2.9. Broker Supervision. Principal brokers and associate brokers who are branch brokers shall be responsible for exercising active supervision over the conduct of all licensees affiliated with them.

6.2.9.1. A broker will not be held responsible for inadequate supervision if:

(a) An affiliated licensee violates a provision of Section 61-2-1, et seq., or the rules promulgated thereunder, in contravention of the supervising broker's specific written policies or instructions; and

(b) Reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures; and

(c) Upon learning of the violation, the broker attempted to prevent or mitigate the damage; and

(d) The broker did not participate in the violation; and

(e) The broker did not ratify the violation; and

(f) The broker did not attempt to avoid learning of the violation.

6.2.9.2. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and affiliated licensees shall not release the broker and licensees of any duties, obligations, or responsibilities.

6.2.10. Disclosure of Fees. If a real estate licensee who is acting as an agent in a transaction will receive any type of fee in connection with a real estate transaction in addition to a real estate commission, that fee must be disclosed in writing to all parties to the transaction.

6.2.11. Fees from Builders. All fees paid to a licensee for referral of prospects to builders must be paid to the licensee by the principal broker with whom he is licensed and affiliated. All fees must be disclosed as required by R162-6.2.10.

6.2.12. Fees from Manufactured Housing Dealers. If a licensee refers a prospect to a manufactured home dealer or a mobile home dealer, under terms as defined in Section 58-56-1, et seq., any fee paid for the referral of a prospect must be paid to him by the principal broker with whom he is licensed.

6.2.13. Gifts and Inducements. A gift given by a principal broker to a buyer or seller, lessor or lessee, in a real estate transaction as an inducement to use the services of a real estate brokerage, or in appreciation for having used the services of a brokerage, is permissible and is not an illegal sharing of commission. If an inducement is to be offered to a buyer or seller, lessor or lessee, who will not be obligated to pay a real estate commission in a transaction, the principal broker must obtain from the party who will pay the commission written consent that the inducement be offered.

6.2.14. "Due-On-Sale" Clauses. Real estate licensees have an affirmative duty to disclose in writing to buyers and sellers the existence or possible existence of a "due-on-sale" clause in an underlying encumbrance on real property, and the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of the underlying encumbrance.

6.2.15. Personal Assistants. With the permission of the principal broker with whom the licensee is affiliated, the licensee may employ an unlicensed individual to provide services in connection with real estate transactions which do not require a real estate license, including the following examples:

(a) Clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact has been initiated by the prospect and not by the unlicensed person;

(b) At an open house, distributing preprinted literature written by a licensee, so long as a licensee is present and the unlicensed person furnishes no additional information concerning the property or financing and does not become involved in negotiating, offering, selling or filling in contracts;

(c) Acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion of, or filling in of, the documents;

(d) Placing brokerage signs on listed properties;

(e) Having keys made for listed properties; and

(f) Securing public records from the County Recorders' Offices, zoning offices, sewer districts, water districts, or similar entities.

6.2.15.1. If personal assistants are compensated for their work, they shall be compensated at a predetermined rate which is not contingent upon the occurrence of real estate transactions. Licensees may not share commissions with unlicensed persons who have assisted in transactions by performing the services listed in this rule.

6.2.15.2. The licensee who hires the unlicensed person will be responsible for supervising the unlicensed person's activities, and shall ensure that the unlicensed person does not perform activity which requires a real estate license.

6.2.15.3. Unlicensed individuals may not engage in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in R162-6.2.15.(a) above.

6.2.16. Fiduciary Duties. A principal broker and licensees acting on his behalf owe the following fiduciary duties to the principal:

6.2.16.1. Duties of a seller's or lessor's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the seller or the lessor owe the seller or the lessor the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the seller or the lessor instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the seller or lessor;

(c) Full disclosure, which obligates the agent to tell the seller or lessor all material information which the agent learns about the buyer or lessee or about the transaction;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the seller or lessor which would likely weaken the seller's or lessor's bargaining position if it were known, unless the agent has permission from the seller or lessor to disclose the information. This duty does not require the agent to withhold any known material fact concerning a defect in the property or the seller's or lessor's ability to perform his obligations;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.16.2. Duties of a buyer's or lessee's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the buyer or lessee owe the buyer or lessee the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the buyer or lessee instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the buyer or lessee;

(c) Full Disclosure, which obligates the agent to tell the buyer or lessee all material information which the agent learns about the property or the seller's or lessor's ability to perform his obligations;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the buyer or lessee which would likely weaken the buyer's or lessee's bargaining position if it were known, unless the agent has permission from the buyer or lessee to disclose the information. This duty does not permit the

agent to misrepresent, either affirmatively or by omission, the buyer's or lessee's financial condition or ability to perform;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.16.3. Duties of a limited agent. A principal broker and licensees acting on his behalf who act as agent for both seller and buyer, or lessor and lessee, commonly referred to as "dual agents," are limited agents since the fiduciary duties owed to seller and to buyer, or to lessor and lessee, are inherently contradictory. A principal broker and licensees acting on his behalf may act in this limited agency capacity only if the informed consent of both buyer and seller, or lessor and lessee, is obtained.

6.2.16.3.1. In order to obtain informed consent, the principal broker or a licensee acting on his behalf shall clearly explain to both buyer and seller, or lessor and lessee, that they are each entitled to be represented by their own agent if they so choose, and shall obtain written agreement from both parties that they will each be giving up performance by the agent of the following fiduciary duties:

(a) The principal broker or a licensee acting on his behalf shall explain to buyer and seller, or lessor and lessee, that they are giving up their right to demand undivided loyalty from the agent, although the agent, acting in this neutral capacity, shall advance the interest of each party so long as it does not conflict with the interest of the other party. In the event of conflicting interests, the agent will be held to the standard of neutrality; and

(b) The principal broker or a licensee acting on his behalf shall explain to buyer and seller, or lessor and lessee, that there will be a conflict as to a limited agent's duties of confidentiality and full disclosure, and shall explain what kinds of information will be held confidential if told to a limited agent by either buyer or seller, or lessor and lessee, and what kinds of information will be disclosed if told to the limited agent by either party. The limited agent may not disclose any information given to the agent by either principal which would likely weaken that party's bargaining position if it were known, unless the agent has permission from the principal to disclose the information; and

(c) The principal broker or a licensee acting on his behalf shall explain to the buyer and seller, or lessor and lessee, that the limited agent will be required to disclose information given to the agent in confidence by one of the parties if failure to disclose the information would be a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations.

(d) The Division and the Commission shall consider use of consent language approved by the Division and the Commission to be informed consent.

6.2.16.3.2. In addition, a limited agent owes the following fiduciary duties to all parties:

(a) Obedience, which obligates the limited agent to obey all lawful instructions from either the buyer or the seller, lessor and lessee, consistent with the agent's duty of neutrality;

(b) Reasonable care and diligence;

(c) Holding safe all money or property entrusted to the limited agent; and

(d) Any additional duties created by the agency agreement.

6.2.16.4. Duties of a sub-agent. A principal broker and licensees acting on his behalf who act as sub-agents owe the same fiduciary duty to a principal as the brokerage retained by the principal.

KEY: real estate business
[~~January 27, 2000~~]2001 **61-2-5.5**
Notice of Continuation July 1, 1997

◆ ◆

Community and Economic Development, Community Development, Library

R223-2

Public Library Online Access for Eligibility to Receive Public Funds

NOTICE OF PROPOSED RULE
(New)
DAR FILE NO.: 23352
FILED: 11/30/2000, 15:59
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The State Library proposes to fulfill the mandate set forth in H.B. 157 passed by the 2000 State Legislature to ensure that public libraries receiving state funds shall have a policy in place that restricts access by minors to Internet or online sites containing obscene material.
(DAR Note: H.B. 157 is found at 2000 Utah Laws 136, and will be effective July 1, 2001.)

SUMMARY OF THE RULE OR CHANGE: In order for a public library that offers public access to the Internet to retain eligibility to receive state funds, each public library board shall adopt and enforce a policy that restricts access by minors to Internet or online sites containing obscene material and that meets the Public Library Online Access Policy Standard defined by this rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-7-213 and 9-7-215

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Implementation of this rule will impose minimal cost on the state, and it will generate no savings. The State Library Division will adapt regular, ongoing staff activities (such as the provision of continuing education, consulting, website development and maintenance, newsletter articles and professional publications) in order to provide assistance and counsel to public library staff and boards as they implement this rule. The Division Director and staff will allocate time to review and process Public Library Online Access Policies submitted by public libraries as they comply with this rule. Direct costs to the state will not

exceed $1,000, depending on the cost of publications purchased or speaker fees for continuing education activities.

❖LOCAL GOVERNMENTS: No savings to local governments under this rule are anticipated. Exact local government costs are unknown, and will vary depending several factors: the degree to which current local policies and procedures are already in compliance with this rule; the extent to which a Library Board deems it necessary to change its policy and procedures in order to comply with this rule; and the extensiveness of the policy enforcement mechanisms the Board may adopt. Utah law (Sections 9-7-404, 9-7-405, 9-7-504, and 9-7-505) grants full authority to local Library Boards to establish policies for library operations and to make, amend, and revoke rules for the governing of the library. Therefore, policy, implementation, and enforcement decisions will be made independently by each Library Board, and not by the State Library Division.

❖OTHER PERSONS: Because this rule is directed to public libraries offering public access to the Internet and other online sites, there is no anticipated cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The costs for public libraries to comply with this rule fall into three basic areas: the cost of the policy process itself; the cost of policy implementation; and the cost of policy enforcement. With respect to the cost of the policy process, the Division anticipates that many current public library policies, with minor technical changes, will comply with this rule and that those libraries will likely incur few additional costs in reviewing their policies. Some libraries may elect to make substantive policy changes. In such cases, costs might include the indirect costs associated with policy drafting (primarily Board and staff time and photocopying), costs associated with providing public notice of the policy process, and costs associated with obtaining local legal review. In many cases, city and county attorneys will provide a legal review at no charge. With respect to the cost of policy implementation, the Library Board may elect to obtain additional training for the staff if substantive revisions have been made in the policy or its enforcement procedures. Libraries will also incur minor administrative costs associated with posting the new policy and/or the signage required by this rule. The cost associated with posting notice of a new policy may vary from minimal (for example, a simple sign produced with word processing) to moderate (for example, professionally produced signs for posting at multiple locations within the library) to extensive (implementing special Internet workstations log-on procedures which provide policy notice and a "clicked" acknowledgment of the policy's terms). The latter approach could also be part of a library's enforcement mechanisms.

Policy enforcement costs will vary widely from library to library, depending on the extensiveness of the enforcement procedures and/or mechanisms adopted by the Library Board. Based on informal contacts made with public library directors in the fall of 1999, about 70 percent of Utah public libraries were already using filtering technology to some extent as a supplement to staff enforcement of the library's Internet access policy. Of those libraries, some were running independently acquired and installed software; others were using filtering software available at that time at no cost through the Utah Education Network (UEN). The UEN "no cost" option is no longer available. Therefore, libraries that formerly used the UEN software or libraries that add filtering software to comply with this rule are likely to incur costs not previously budgeted. Libraries that continue to use previously acquired and installed software are not likely to incur increased or unbudgeted costs. The cost of filtering software falls into two broad categories: the cost of acquiring the software and the cost of obtaining technical support for software maintenance. The cost of acquiring filtering software varies widely. Among the factors potentially affecting that cost are the size of the library, the number of workstations to be filtered, the sophistication of the software, the extent to which the software permits some degree of local control or customization in what is filtered, and whether the software is installed on a "per seat" basis, at the network level, or via the Internet. UEN and a variety of vendors currently offer filtering software on a fee basis. For a single site library with a few workstations, annual costs (including start-up one-time fees and annual licensing fees) could run from $100 to several hundred dollars. Larger, multiple-branch libraries with many workstations will incur much higher costs. The cost of providing technical support for filtering software can also be substantial and, like the cost of software acquisition, is sensitive to a number of factors. Does the library have its own technical support staff, can it tap the technical support staff of its city or county, or must it contract for commercial technical support services? Is the software installed on a "per seat" basis, on the library's local area network, or is the software web-based? Finally, some libraries may continue to use staff-based policy enforcement mechanisms. These libraries are not likely to incur additional direct costs, but the staff time required for close supervision of Internet workstations can be significant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will have no fiscal impact on businesses.

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

Community and Economic Development
Community Development, Library
Suite A
250 North 1950 West
Salt Lake City, UT 84116-7901, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Amy Owen at the above address, by phone at (801) 715-6770, by FAX at (801) 715-6767, or by Internet E-mail at aowen@state.lib.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 01/15/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 01/04/2001, 2:00 p.m., State Library Division, 250 North 1950 West, Suite A, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Amy Owen, Director

R223. Community and Economic Development, Community Development, State Library.

R223-2. Public Library Online Access for Eligibility to Receive Public Funds.

R223-2-1. Authority and Policy.

(1) The Utah State Library Division hereby adopts this rule in accordance with Sections 63-46a-1 et seq., and 9-7-213 and 9-7-215 for the purpose of defining standards for public library online access policies.

(2) For a public library that offers public access to the Internet to retain eligibility to receive state funds, the local Library Board shall adopt and enforce a Policy that restricts access by minors to Internet or online sites containing obscene material and that meets the Public Library Online Access Policy Standard defined by this rule.

R223-2-2. Definitions.

In addition to the terms defined in Section 9-7-101:

(1) "Library Board" means the library board of directors appointed locally (as authorized by Sections 9-7-402 or 9-7-502) and which exercises general policy authority for library services within a city or county of the state of Utah, regardless of the title by which it is known locally.

(2) "Minor" means any individual younger than 18 years of age.

(3) "Obscene" means materials meeting the standard established by the U.S. Supreme Court in Miller v. California, 413 U.S. 15 (1973) whereby an affirmative answer is required to each of the three following questions:

(a) whether "the average person applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest;

(b) whether the work depicts or describes, in a patently offensive way, sexual content specifically defined by the applicable state law; and

(c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

(4) "Policy" means the Public Library Online Access Policy adopted by a Library Board to meet the requirements of this rule and Sections 9-7-213 and 9-7-215.

R223-2-3. Standards.

(1) Process Standard.

(a) Each Library's Policy shall be developed under the direction of the Library Board, adopted in an open meeting, and have an effective date. The Library Board shall review such a policy at least every three years, and a footnote shall be added to the policy indicating the effective date of the last review.

(b) Notice of the availability of the Policy shall be posted in a conspicuous place within the library for all patrons to observe. The Library Board may issue any other public notice it deems appropriate to inform the community about the Policy.

(2) Content Standard.

(a) The Policy shall state that it restricts access by minors to Internet or online sites that contain obscene material and shall state how the Library Board intends to meet the requirements of Section 9-7-215.

(b) The Policy shall inform patrons that administrative procedures and guidelines for the staff to follow in enforcing the policy have been adopted and are available for review at the library.

(c) The Policy shall inform patrons that procedures for use by patrons and staff to handle complaints about the Policy, its enforcement, or about observed patron behavior have been adopted and are available for review at the library.

R223-2-4. Reporting.

(1) Each Library Board shall submit a copy of its Policy to the Director of the State Library Division no later than July 1, 2001, accompanied by a letter signed by the Library Director and Library Board Chair affirming that the Policy was adopted in an open meeting, that notice of the Policy's availability has been posted in a conspicuous place within the library, and that the Policy is intended to meet the provisions of this rule and Sections 9-7-213 and 9-7-215.

(2) All documents submitted shall be classified as public records in accordance with the Government Records Access and Management Act (Title 63, Chapter 2).

R223-2-5. State Library Administrative Procedures.

(1) The State Library Division shall review all public library policies received by July 1, 2001, for compliance with this rule.

(2) The Director of the State Library Division shall issue notices of compliance or non-compliance within 30 days following the receipt of the policy. Any library not submitting a policy shall receive a notice of non-compliance.

(3) Appeals to the notice of non-compliance shall be submitted in writing, within 30 days of the date of the notice, to the Executive Director of the Department of Community and Economic Development, who shall respond within 30 days.

(4) A public library receiving a notice of non-compliance shall not be eligible to receive state funds until the condition(s) upon which the notice of non-compliance is based are corrected and a notice of compliance is received.

(5) A public library in compliance shall be eligible to receive state funds in state fiscal year 2002 and subsequent years, as long as a current Policy is resubmitted to the State Library Division no later than July 1, 2004, and every three years thereafter.

(6) A public library in compliance shall not lose eligibility to receive state funds unless it fails to resubmit a current Policy to the State Library Division no later than July 1, 2004, and every three years thereafter, or unless a complaint submitted to the Library Board under its Policy results in a ruling from a court of law that a minor has accessed obscene material expressly due to insufficient enforcement of the Policy by the local library.

KEY: libraries, public library, *Internet access*
2001 **9-7-213**
9-7-215

Environmental Quality, Drinking Water
R309-204
(Changed to R309-515)
Facility Design and Operation: Source Development

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23341
FILED: 11/28/2000, 15:20
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division has received proposals for use of leased water rights in connection with new public drinking water systems. Current rules do not establish any minimum conditions for the use of leased water. The proposed amendments will allow leased water rights under certain conditions. The remainder of the changes are primarily a re-numbering of Section R309-204 to conform with a re-numbering scheme approved by the Drinking Water Board to allow for forthcoming rule changes mandated by the federal Safe Drinking Water Act (SDWA), correction of spelling errors, and clarification of some previous requirements.

SUMMARY OF THE RULE OR CHANGE: Subsection R309-204-4(8) is added; clarifying that all sources for public water systems (psw) shall have a valid right to divert water for the intended use; title to the water right be vested in the entity owning the pws or leased from a title holder provided: the terms of the lease allow for renewal at the option of the pws owner for a minimum of 20 years with a first right of refusal to purchase the water rights at the end of the lease period, and the cost of the lease and its renewal be subject to the review and concurrence of the Public Service Commission (PSC). Subsections R309-204-5(3)(a), R309-204-6(5)(v) and R309-204-7(4)(c) refer the reader to the added subsection R309-204-4(8). Outline of submittals for approval of surface water sources, well sources, and spring sources are clarified. Re-numbering of existing rule R309-204 and references to other rules to conform with a re-numbering scheme approved by the Drinking Water Board along with some minor corrections to bring clarity. Water Rights is added to the keywords at the end of the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--Because this is primarily a re-numbering of existing rule R309-204 and a clarification and formalization of the Divisions review policy concerning validity of water rights utilized by public drinking water systems there will be no increased work load to staff nor any change to the State budget as a result of these proposed changes.
❖LOCAL GOVERNMENTS: None--For the same reasons as in the Aggregate anticipated costs or savings to State Budget.
❖OTHER PERSONS: Purchasers of lots in new subdivisions, developed primarily by private land developers, may see increased cost of the lot due to additional costs the developer may incur in purchase or lease of adequate water rights. This should be a disclosed cost that the buyer is fully aware of prior to purchase rather than a hidden cost that the buyer may only become aware of after construction of a home or business; making him a hostage to the developer or water right title holder.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Private land developers, building drinking water systems for new subdivisions, may find water right title holders less agreeable to the longer lease terms and renewal agreements of this proposal and may incur additional costs for adequate water rights or leases.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees that the proposed changes to this rule will have little to no fiscal impact on existing public water systems. Impact on developers of new subdivisions and to purchasers of lots should be minimal; especially if the State Engineer continues the practice of allowing transfer of rights to other diversion points within a drainage basin, thereby preventing developers being held hostage by prior land owners holding title to water rights on a specific piece of land.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Drinking Water
Second Floor
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:
Michael B. Georgeson or William B. Birkes at the above address, by phone at (801) 536-4197 or (801) 536-4201, by FAX at (801) 536-4211, or by Internet E-mail at mgeorges@deq.state.ut.us or bbirkes@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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

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

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R309. Environmental Quality, Drinking Water.
R309-515[~~204~~]. Facility Design and Operation: Source Development.
R309-515[~~204~~]-1. Purpose.

This rule specifies minimum requirements for design and development of public drinking water sources. It is intended to be applied in conjunction with R309-500[~~201~~] through R309-550[~~211~~]. Collectively, these rules govern the design, construction,

operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-515[~~204~~]-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code [~~Annotated~~]and in accordance with Title 63, Chapter 46a of the same, known as the Administrative Rulemaking Act.

R309-515[~~204~~]-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110[~~200~~] but may be further clarified herein.

R309-515[~~204~~]-4. General.

(1) Issues to be Considered.

The selection, development and operation of a public drinking water source must be done in a manner which will protect public health and assure that all required water quality standards, as described in R309-200[~~103~~] (Drinking Water Standards), are met.

(2) Communication with the Division.

Because of the issues described above in (1), engineers and groundwater professionals are advised to work closely with the Division to help assure that sources are properly sited, developed and operated.

(3) Number of Sources and Quantity Requirements.

Community water systems established after January 1, 1998 serving more than 100 connections shall have a minimum of two sources, except where served by a water treatment plant. Community Water Systems established prior to that date, currently serving more than 100 physical connections or more than 100 equivalent residential connections (ERC's), shall obtain a separate source no later than January 1, 2002[~~2000~~]. For all systems, the total developed source capacity(ies) shall equal or exceed the peak day demand of the system. Refer to R309-510-7[~~203-5~~] of these rules for procedure to estimate the peak day demand if system's actual daily demands are not otherwise available.

(4) Quality Requirements.

In selecting a source of water for development, the designing engineer shall demonstrate to the satisfaction of the Executive Secretary that the source(s) selected for use in public water systems are of satisfactory quality, or can be treated in a manner so that the quality requirements of R309-200[~~103~~] (Drinking Water Standards) can be met.

(5) Initial Analyses.

All new drinking water sources, unless otherwise noted below, shall be analyzed for the following:

(a) All the primary [~~and secondary~~]inorganic contaminants listed in R309-200[~~103~~], Table 200[~~103~~]-1 [~~and Table 103-5~~](excluding Asbestos unless it would be required by R309-205-9(2)[~~104-4.1.2~~]);

(b) Turbidity, as NTU;

(c) The secondary inorganic contaminants listed in R309-200, Table 200-7 (excluding disinfection byproducts; Bromate, Bromodichloromethane, Bromoform, Chlorite, Chloroform, Dibromochloromethane, Dichloroacetic acid, and Trichloroacetic acid);

(d)[~~(b)~~] Ammonia as N; Boron; Calcium; [~~Chromium, Hex as Cr; Copper; ~~]Lead; Magnesium; Potassium; [~~Turbidity, as NTU; ~~]Specific Conductivity at 25 degrees Celsius, mu mhos[~~u mhos~~]/cm; Bicarbonate; Carbon Dioxide; Carbonate; Hydroxide; Phosphorous, Ortho as P; Silica, dissolved as SiO_2; [~~Surfactant as MBAS; ~~]Total Hardness as $CaCO_3$; and Alkalinity as $CaCO_3$;[~~,~~]

(e)[~~(c)~~] Pesticides, PCB's and SOC's as listed in R309-200[~~103-2.3a~~], Table 200[~~103~~]-2 unless the source is for a system categorized[~~is~~] a transient non-community pws or, as[~~if~~] a community pws or non-transient non-community pws, they have received waivers in accordance with R309-205-11(1)(f)[~~104-4.3.1f.~~] (The following six constituents have been excused from monitoring in the State by the EPA, dibromochloropropane, ethylene dibromide, Diquat, Endothall, glyphosate and Dioxin);[~~,~~]

(f)[~~(d)~~] VOC's as listed in R309-200[~~103-2.3b~~], Table 200[~~103~~]-3 unless the source is for a system categorized[~~is~~] a transient non-community pws;[~~, and~~]

(g)[~~(e)~~] Radiologic chemicals as listed in R309-200[~~103-2.4~~], Table 200-5 unless the source is for a system categorized[~~is~~] a non-transient non-community pws or a transient non-community pws;[~~,~~]

(h)[~~(f)~~] Unregulated contaminants as listed in R309-205[~~104-5.1.1~~], Table 205-1 list 1[~~A~~] and list 2[~~B~~], unless the source is for a system categorized a transient non-community pws; and

(i) Bacteriologic contaminants, after well and spring construction is complete and the source has been disinfected and flushed in accordance with the appropriate AWWA Standard. Microbiological sampling of surface water sources should be conducted prior to construction as part of a watershed survey (refer to R309-515-5(2)(b)).

All analyses shall be performed by a certified laboratory as required by R309-205-6[~~104-3~~] (Specially prepared sample bottles are required),

(6) Source Classification.

Subsection R309-505-7(1)[~~202-7(1)(a)(i)~~] provides information on the classification of water sources. The Executive Secretary shall classify all existing or new sources as either:

(a) Surface water or ground water under direct influence of surface water which will require conventional surface water treatment or an approved equivalent, or as

(b) Ground water not under the direct influence of surface water.

(7) Latitude and Longitude.

The latitude and longitude, to at least the nearest second, and the method used to determine the coordinates; or the location by section, township, range, and course and distance from an established outside section corner or quarter corner of each point of diversion shall be submitted to the Executive Secretary prior to source site approval as part of the Drinking Water Source Protection plan review required by R309-600 or R309-605.

(8) Water Rights.

All sources for public drinking water systems shall have a valid right to divert water for the purposes intended, and in the quantities necessary as outlined in rule R309-510. This right is issued by the State Engineer (Division of Water Rights). Title to the water right shall be vested in the entity owning the public drinking water system or may be leased by the public drinking water system owner from the title holder provided:

(a) the title holder is a political subdivision of the State (e.g. Central Utah Water Conservancy District, Weber Basin Water Conservancy District, etc) and the contract allows for perpetual renewal by the public water system, or

(b) if the title holder is a private individual:

(i) the terms of the lease allow for annual renewal at the option of the public water system for period of at least a minimum of 20 years with a first right of refusal to purchase the water right,

(ii) the cost of the lease or any increase in annual renewal costs shall be subject to the review and concurrence of the Public Service Commission and notice of that concurrence be provided to the Division (Division of Drinking Water),

(iii) the provisions of the contract shall apply to and bind the successors and assigns of the parties to the conditions therein,

(iv) a change application be filed with the State Engineer's Office indicating any changes in beneficial use, and

(v) the contract shall be recorded with the local county recorder's office.

Review and approval by the Executive Secretary of any proposed contract under item (b) above shall be required prior to approval of a public water system utilizing leased water rights and prior to any filing with the local county recorder's office.

R309-515[~~204~~]-5. Surface Water Sources.

(1) Definition.

A surface water source, as is defined in R309-110, shall include, but not be limited to tributary systems, drainage basins, natural lakes, artificial reservoirs, impoundments and springs or wells which have been classified as being directly influenced by surface water. Surface water sources will not be considered for culinary use unless water from them[~~they~~] can be rendered acceptable by conventional surface water treatment or other equivalent treatment techniques acceptable to the Executive Secretary.

(2) Outline of Surface Water Source Approval Process.

Each of the following submittals shall be accompanied by a completed "project notification form":

(a) Initial[~~Pre-design~~] Submittal.

The following information shall[~~must~~] be submitted to the Executive Secretary and approved in writing before commencement of design of diversion structures and/or water treatment facilities:

(i)[~~(a)~~] A copy of the chemical analyses required by R309-200[~~103~~] and described in R309-515[~~204~~]-4(5) above unless waived by the Executive Secretary, and

(ii)[~~(b)~~] A survey of the watershed tributary to the watercourse along which diversion structures are proposed. The survey shall include, but not be limited to:

(A)[~~(i)~~] determining possible future uses of impoundments or reservoirs,

(B)[~~(ii)~~] the present stream classification by the Division of Water Quality, any obstacles to having stream(s) reclassified 1C, and determining degree of watershed control by owner or other agencies,

(C)[~~(iii)~~] assessing degree of hazard to the supply by accidental spillage of materials that may be toxic, harmful or detrimental to treatment processes,

(D)[~~(iv)~~] obtaining samples over a sufficient period of time to assess the microbiological, physical, chemical and radiological characteristics and variations of the water,

(E)[~~(v)~~] assessing the capability of the proposed treatment process to reduce contaminants to applicable standards, and

(F)[~~(vi)~~] consideration of currents, wind and ice conditions, and the effect of tributary streams at their confluence.

(iii) If an alternative surface water treatment method is proposed (R309-530), rather than conventional surface water treatment (R309-525), the design engineer shall submit a proposed protocol for conducting pilot plant testing and studies or Environmental Technology Verification Reports for the selected process.

(b)[~~(3)~~] Second[~~Pre-construction~~] Submittal.

Following approval of a surface water source, the following additional information shall[~~must~~] be submitted for review and approval prior to commencement of construction:

(A)[~~(a)~~] Evidence that the water system owner has a legal right to divert water from the proposed source for domestic or municipal purposes (see R309-515-4(8));

(B)[~~(b)~~] Documentation regarding the minimum firm yield which the watercourse is capable of producing (see R309-515[~~204~~]-5(3)[~~(4)~~](a) below; and

(C)[~~(c)~~] Complete plans and specifications and supporting documentation for the proposed treatment facilities so as to ascertain compliance with R309-525[~~206~~] or R309-530[~~207~~].

(c) Final Submittal.

All items listed in R309-500-9 (especially satisfactory results of microbiological and turbidity sampling of water from the treatment plant after construction, disinfection and flushing is complete) shall be submitted and an Operating Permit obtained before any water from the treatment plant is introduced into a public water system.

(3)[~~(4)~~] Quantity.

The quantity of water from surface sources shall:

(a) Be assumed to be no greater than the low flow of a 25 year recurrence interval or the low flow of record for these sources when 25 years of records are not available;

(b) Meet or exceed the anticipated peak day demand for water as estimated in R309-510[~~203~~]-7 and provide a reasonable surplus for anticipated growth; and

(c) Be adequate to compensate for all losses such as silting, evaporation, seepage, and sludge disposal which would be anticipated in the normal operation of the treatment facility.

(4)[~~(5)~~] Diversion Structures.

Design of intake structures shall provide for:

(a) Withdrawal of water from more than one level if quality varies with depth;

(b) Intake of lowest withdrawal elevation located at sufficient depth to be kept submerged at the low water elevation of the reservoir;

(c) Separate facilities for release of less desirable water held in storage;

(d) Occasional cleaning of the inlet line;

(e) A diversion device capable of keeping large quantities of fish or debris from entering an intake structure; and

(f) Suitable protection of pumps where used to transfer diverted water (refer to R309-540[~~209~~]-5).

(5)[~~(6)~~] Impoundments.

The design of an impoundment reservoir shall provide for, where applicable:

(a) Removal of brush and trees to the high water level;

(b) Protection from floods during construction;

(c) Abandonment of all wells which may be inundated (refer to applicable requirements of the Division of Water Rights); and

(d) Adequate precautions to limit nutrient loads.

(6) Source Protection.

Public drinking water systems are responsible for protecting their sources from contamination. The selection of a surface water diversion location shall only be made after consideration of the requirements of R309-605. Sources shall be located in an area which will minimize threats from existing or potential sources of pollution.

R309-515[~~204~~]-6. Ground Water - Wells.

(1) Required Treatment.

If properly developed, water from wells may be suitable for culinary use without treatment. A determination as to whether treatment may be required can only be made after the source has been developed and evaluated.

(2) Standby Power.

Water suppliers, particularly community water suppliers, shall[~~should~~] assess the capability of their system in the event of a power outage. If gravity fed spring sources are not available, one or more of the system's well sources shall[~~should~~] be equipped for operation during power outages. In this event:

(a) To ensure continuous service when the primary power has been interrupted, a power supply shall[~~should~~] be provided through connection to at least two independent public power sources, or portable or in-place auxiliary power available as an alternative; and

(b) When automatic pre-lubrication of pump bearings is necessary, and an auxiliary power supply is provided, the pre-lubrication line shall[~~should~~] be provided with a valved by-pass around the automatic control, or the automatic control shall be wired to the emergency power source.

(3) The Utah Division of Water Rights.

The Utah Division of Water Rights (State Engineer's Office) regulates the drilling of water wells. Before the drilling of a well commences, the well driller must receive a start card from the State Engineer's Office.

(4) Source Protection.

Public drinking water systems are responsible for protecting their sources from contamination. The selection of a well location shall only be made after consideration of the requirements of R309-600[~~113~~]. Sources shall be located in an area which will minimize threats from existing or potential sources of pollution.

If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as follows:

(a) sewer lines shall be ductile iron pipe with restrained[~~mechanical~~] joints or fusion welded high density polyethylene plastic pipe (solvent welded joints shall not be accepted);

(b) lateral to main connection shall be shop fabricated or saddled with a mechanical clamping watertight device designed for the specific pipe;

(c) the sewer pipe to manhole connections shall made using a shop fabricated sewer pipe seal ring cast into the manhole base (a restrained[~~mechanical~~] joint shall be installed within 12 inches of the manhole base on each line entering the manhole, regardless of the pipe material);

(d) the sewer pipe shall be laid with no greater than 2 percent deflection at any joint;

(e) backfill shall be compacted to not less than 95 percent of maximum laboratory density as determined in accordance with ASTM Standard D-690;

(f) sewer manholes shall meet the following requirements:

(i) the manhole base and walls, up to a point at least 12 inches above the top of the upper most sewer pipe entering the manhole, shall be shop fabricated in a single concrete pour.

(ii) the manholes shall be constructed of reinforced concrete.

(iii) all sewer lines and manholes shall be air pressure tested after installation.

(5) Outline of Well Approval Process.

Each of the following submittals shall be accompanied by a completed "project notification form":

(a) Initial Submittal.

Well drilling of a public water system supply well shall not commence until both of the following items are submitted and written approval received from the Executive Secretary[~~receive a favorable review~~]:

(i) a Preliminary Evaluation Report on source protection issues as required by R309-600[~~113~~]-13(2), and

(ii) engineering plans and specifications governing the well drilling and aquifer testing.

(b) Grouting Inspection During Well Construction.

An engineer from the Division, [~~or~~]the appropriate district engineer of the Department of Environmental Quality, or an individual approved by the Executive Secretary, shall be contacted at least three days before the anticipated beginning of the well grouting procedure (see R309-515[~~204~~]-6(6)(h)[~~(i)~~] "Grouting Techniques and Requirements"). The well grouting procedure shall be witnessed by one of these individuals or their designee.

(c) Second Submittal.

After completion of the well drilling, but prior to installation of any permanent equipment or piping necessary to introduce water from the well into a public water system, the following information shall be submitted and receive a favorable review[~~ before water from the well can be introduced into a public water system~~]:

(i) a copy of the "Report of Well Driller" as required by the State Engineer's Office which is complete in all aspects and has been stamped as received by the same;

(ii) a copy of the letter from the engineer described in R309-515[~~204~~]-6(5)(b) above, indicating inspection and confirmation that the well was grouted in accordance with the well drilling specifications and the requirements of this rule;

(iii) a copy of any[~~the~~] pump test(s) including the constant-rate aquifer[~~yield vs. drawdown~~] test as described in R309-515[~~204~~]-6(10)(b);

(iv) a copy of the chemical analyses required by R309-515[~~204~~]-4(5);

(v) documentation indicating that the water system owner has a right to divert water for domestic or municipal purposes (see R309-515-4(8)) from the well source;

(d)[~~(vi)~~] Third Submittal.

a copy of complete plans and specifications covering well equipment, treatment facilities if any, and diversion piping

necessary to introduce water from the well into the public water[~~distribution~~] system[~~; and~~

~~(vii) a bacteriological analysis of water obtained from the well after installation of permanent equipment, disinfection and flushing~~].

(e)[~~(d)~~] Final Submittal.

All items listed in R309-500-9 (especially satisfactory results of microbiological sampling of water from the well after installation of permanent equipment, disinfection and flushing) shall be submitted and an[~~An Operation~~] Operating Permit shall be obtained[~~in accordance with R309-201-9~~] before any water from the well is introduced into a public water system.

(6) Well Materials, Design and Construction.

(a) ANSI/NSF Standards 60 and 61 Certification.

All interior surfaces must consist of products complying with ANSI/NSF Standard 61. This requirement applies to casings, drop pipes, well screens, coatings, adhesives, solders, fluxes, pumps, switches, electrical wire, sensors, and all other equipment or surfaces which may be contact the drinking water.

All substances introduced into the well during construction or development shall be certified to comply with ANSI/NSF Standard 60. This requirement applies to drilling fluids (biocides, clay thinners, defoamers, foamers, loss circulation materials, lubricants, oxygen scavengers, viscosifiers, weighting agents) and regenerants. This requirement also applies to well grouting and sealing materials which may come in direct contact with the drinking water.

(b) Permanent [~~Steel~~]Casing.[~~Pipe shall:~~]

(i) Permanent steel casing shall be new single steel casing pipe meeting AWWA Standard A-100, ASTM or API specifications and having a minimum weight and thickness as given in Table 1 found in R655-4-7.2 of the Utah Administrative Code (Administrative Rules for Water Well Drillers, adopted January 19, 1995, Division of Water Rights), and shall:[~~;~~]

(A)[~~(ii)~~] have additional thickness and weight if minimum thickness is not considered sufficient to assure reasonable life expectancy of the well;

(B)[~~(iii)~~] be capable of withstanding forces to which it is subjected;

(C)[~~(iv)~~] be equipped with a drive shoe when driven;

(D)[~~(v)~~] have full circumferential welds or threaded coupling joints; and

(E)[~~(vi)~~] project at least 18 inches above the anticipated final ground surface and at least 12 inches above the anticipated pump house floor level. At sites subject to flooding the top of the well casing shall terminate at least three feet above the 100 year flood level or the highest known flood elevation, whichever is higher.

(ii)[~~(c) Non-Ferrous Casing Material.~~

~~—~~] The use of any non-ferrous material for a well casing shall receive prior approval of the Executive Secretary based on the ability of the material to perform its desired function. Thermoplastic water well casing pipe shall meet ANSI/ASTM Standard F480-76 and shall bear the logo NSF-wc indicating compliance with NSF Standard 14 for use as well casing, shall project at least 18 inches above the anticipated final ground surface and at least 12 inches above the anticipated pump house floor level; the projection being fully encased by reinforced concrete having a minimum thickness of five inches. At sites subject to flooding the top of the well casing shall terminate at least three feet above the 100 year flood level or the highest known flood elevation, whichever is higher.

(c)[~~(d)~~] Disposal of Cuttings.

Cuttings and waste from well drilling operations shall not be discharged into a waterway, lake or reservoir. The rules of the Utah Division of Water Quality must be observed with respect to any[~~these~~] discharges.

(d)[~~(e)~~] Packers.

Packers, if used, shall be of material that will not impart taste, odor, toxic substances or bacterial contamination to the well water. Lead, or partial lead packers are specifically prohibited.

(e)[~~(f)~~] Screens.

The use of well screens is recommended where appropriate and, if used, they shall:

(i) be constructed of material resistant to damage by chemical action of groundwater or cleaning operations;

(ii) have size of openings based on sieve analysis of formations or gravel pack materials;

(iii) have sufficient diameter to provide adequate specific capacity and low aperture[~~aperature~~] entrance velocities;

(iv) be installed so that the operating water level remains above the screen under all pumping conditions; and

(v) be provided with a bottom plate or washdown bottom fitting of the same material as the screen.

(f)[~~(g)~~] Plumbness and Alignment Requirements.

Every well shall be tested for plumbness and vertical alignment in accordance with AWWA Standard A100-97. Plans and specifications submitted for review shall:

(i) have the test method and allowable tolerances clearly stated in the specifications. and

(ii) clearly indicate any options the driller[~~design engineer~~] may have if the well fails to meet the requirements. Generally wells may be accepted if the misalignment does not interfere with the installation or operation of the pump or uniform placement of grout.

(g)[~~(h)~~] Casing Perforations.

The placement of perforations in the well casing shall:

(i) be so located to permit as far as practical the uniform collection of water around the circumference of the well casing, and

(ii) be of dimensions and size to restrain the water bearing soils from entrance into the well.

(h)[~~(i)~~] Grouting Techniques and Requirements.

All permanent well casing for public drinking water wells shall be grouted to a depth of at least 100 feet below the ground surface unless an "exception" is issued by the Executive Secretary[~~(see R309-102-2.2)~~].

If a well is to be considered in a protected aquifer the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective layer, as described in R309-600[~~113~~]-6(1)(v).

The following applies to all drinking water wells:

(i) Consideration During Well Construction.

(A) Sufficient annular opening shall be provided to permit a minimum of two inches of grout between the permanent casing and the drilled hole, taking into consideration any joint couplings. If a carrier casing is left in place, the minimum clearances above shall pertain to both annular openings (between casings and between carrier casing and the drilled hole), the carrier casing shall be adequately perforated so as to ensure grout contact with the native

formations, and the carrier casing shall be withdrawn at least five feet during grouting operations.

(B) Additional information is available from the Division for recommended construction methods for grout placement.

(C) The casing(s) must be provided with sufficient guides welded to the casing to permit unobstructed flow and uniform thickness of grout.

(ii) Grouting Materials.

(A) Neat Cement Grout.

Cement, conforming to ASTM Standard C150, and water, with no more than six gallons of water per sack of cement, shall be used for two inch openings. Additives may be used to increase fluidity subject to approval by the Executive Secretary.

(B) Concrete Grout.

Equal parts of cement conforming to ASTM Standard C150, and sand, with not more than six gallons of water per sack of cement may be used for openings larger than two inches.

(C) Clay Seal.

Where an annular opening greater than six inches is available a clay seal of clean local clay mixed with at least ten percent swelling bentonite may be used when approved by the Executive Secretary.

(iii) Application.

(A) When the annular opening is less than four inches, grout shall be installed under pressure, by means of a positive displacement grout pump, from the bottom of the annular opening to be filled.

(B) When the annular opening is four or more inches and 100 feet or less in depth, and concrete grout is used, it may be placed by gravity through a grout pipe installed to the bottom of the annular opening in one continuous operation until the annular opening is filled.

(C) All temporary construction casings should be removed but shall be withdrawn at least five feet during the grouting operation to ensure grout contact with the native formations.

(D) When a "well in a protected aquifer" classification is desired, the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective clay layer (see R309-600[~~113~~]-6(1)(v)). If the clay layer starts below 100 feet, grout shall extend from the ground surface to a depth of at least 100 feet, grout or native fill may be utilized from there to the top of the clay layer, and then grout placed completely through the protective clay layer. If the clay layer starts and ends above 100 feet, grout shall extend from the ground surface down to and completely through the protective clay layer.

(E) After cement grouting is applied, work on the well shall be discontinued until the cement or concrete grout has properly set; usually a period of 72 hours.

(i)[~~(j)~~] Water Entered Into Well During Construction.

Any water entering a well during construction shall not be contaminated and should be obtained from a chlorinated municipal system. Where this is not possible the water must be dosed to give a 100 mg/l free chlorine residual. Refer also to the administrative rules of the Division of Water Rights in this regard.

(j)[~~(k)~~] Gravel Pack Wells.

The following shall apply to gravel packed wells:

(i) the gravel pack material is to be of well rounded particles, 95 percent siliceous material, that are smooth and uniform, free of foreign material, properly sized, washed and then disinfected immediately prior to or during placement,

(ii) the gravel pack is placed in one uniform continuous operation,

(iii) refill pipes, when used, are Schedule 40 steel pipe incorporated within the pump foundation and terminated with screwed or welded caps at least 12 inches above the pump house floor or concrete apron,

(iv) refill pipes located in the grouted annular opening be surrounded by a minimum of 1.5 inches of grout,

(v) protection provided to prevent leakage of grout into the gravel pack or screen, and

(vi) any casings not withdrawn entirely meet requirements of R309-515[~~204~~]-6(6)(b)[~~ or R309-204-6(6)(c)~~].

(7) Well Development.

(a) Every well shall be developed to remove the native silts and clays, drilling mud or finer fraction of the gravel pack.

(b) Development should continue until the maximum specific capacity is obtained from the completed well.

(c) Where chemical conditioning is required, the specifications shall include provisions for the method, equipment, chemicals, testing for residual chemicals, and disposal of waste and inhibitors.

(d) Where blasting procedures may be used the specifications shall include the provisions for blasting and cleaning. Special attention shall be given to assure that the grouting and casing are not damaged by the blasting.

(8) Capping Requirements.

(a) A welded metal plate or a threaded cap is the preferred method for capping a well.

(b) At all times during the progress of work the contractor shall provide protection to prevent tampering with the well or entrance of foreign materials.

(9) Well Abandonment.

(a) Test wells and groundwater sources which are to be permanently abandoned shall be sealed by such methods as necessary to restore the controlling geological conditions which existed prior to construction or as directed by the Utah Division of Water Rights.

(b) Wells to be abandoned shall be sealed to prevent undesirable exchange of water from one aquifer to another. Preference[~~Prefernce~~] shall be given to using a neat cement grout. Where fill materials are used, which are other than cement grout or concrete, they shall be disinfected and free of foreign materials. When an abandoned will is filled with cement- grout or concrete, these materials shall be applied to the well- hole through a pipe, tremie, or bailer.

(10) Aquifer[~~Well~~] Assessment.

Each new public water system supply well shall be tested to determine aquifer characteristics necessary for delineation of the different protection zones required by R309-600 using the preferred delineation procedure. The constant-rate test, described below, will establish the maximum rate which water may be withdrawn from the well.

After evaluating the results of the constant-rate test described below, the Division will assign a "safe yield" for the well which will be used in determining the number of and type of connections which can be served by the well. Generally this is two-thirds of the maximum discharge rate used for the test, but the Division may

adjust the yield if satisfactory evidence in accordance with R309-510-5 can be presented.

(a) Step Drawdown Test.

Preliminary to the constant-rate test required below, it is recommended that a step-drawdown test (uniform increases in pumping rates over uniform time intervals with single drawdown measurements taken at the end of the intervals) be conducted to determine the maximum pumping rate for the well without lowering the pumping water level to a point ten feet above the[~~desired~~] intake setting.

(b) Constant-Rate Test.

A "constant-rate" yield and drawdown test shall:

(i) be performed on every production well after construction or subsequent treatment and prior to placement of the permanent pump,

(ii) have the test methods clearly indicated in the specifications,

(iii) have a test pump with sufficient capacity that when pumped against the maximum anticipated drawdown, it will be capable of pumping in excess of[~~at least 1.5 times~~] the desired final[~~design~~] discharge rate of the permanent pump,

(iv) provide a description of the method that will be used for measuring and maintaining the discharge rate of the test pump within 5 percent of the start-up rate,

(v)[~~(iv)~~] provide for continuous (uninterrupted) pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours when test pumped at a "constant-rate" equal to [~~1.5 times~~]the maximum[~~desired design~~] discharge rate of the permanent pump to be installed,

(vi)[~~(v)~~] provide the following data:

(A) capacity vs. head characteristics for the test pump (manufacturer's pump curve),

(B) static water level (in feet to the nearest half-foot[~~tenth~~], as measured from an identified datum; usually the top of casing),

(C) depth of test pump intake,

(D) time and date of starting and ending test(s),

(vii)[~~(vi)~~] For the "constant-rate" test provide the following at time intervals sufficient for at least ten essentially uniform intervals for each log cycle of the graphic evaluation required below:

(A) record the time since starting test (in minutes),

(B) record the actual pumping rate,

(C) record the pumping water level (in feet to the nearest half-foot[~~tenth~~], as measured from the same datum used for the static water level),

(D) record the drawdown (pumping water level minus static water level in feet to the nearest half-foot[~~tenth~~]),

(E) provide graphic evaluation on semilogarithmic graph paper by plotting the drawdown measurements on the arithmetic scale at locations corresponding to time since starting test on the logarithmic scale, and

(viii)[~~(vii)~~] Immediately after termination of the constant-rate test, and for a period of time until there are no changes in depth to water level measurements for at least six hours, record the following at time intervals similar to those used during the constant-rate pump test:

(A) time since stopping pump test (in minutes),

(B) depth to water level (in feet to the nearest half-foot[~~tenth~~], as measured from the same datum used for the pumping water level).

(11) Well Disinfection.

Every new, modified, or reconditioned well including pumping equipment shall be disinfected before being placed into service for drinking water use. These shall be disinfected according to AWWA Standard C654-97 published by the American Water Works Association as modified to incorporate the following as a minimum standard:

(i) the well shall be disinfected with a chlorine solution of sufficient volume and strength and so applied that a concentration of at least 50 parts per million is obtained in all parts of the well and comes in contact with equipment installed in the well. This solution shall remain in the well for a period of at least eight hours, and

(ii) a satisfactory bacteriologic water sample analysis shall be obtained prior to the use of water from the well in a public water system.

(12) Well Equipping.

(a) Naturally Flowing Wells.

Naturally flowing wells shall:

(i) have the discharge controlled by valves,

(ii) be provided with permanent casing and sealed by grout,

(iii) if erosion of the confining bed adjacent to the well appears likely, special protective construction may be required by the Division.

(b) Line Shaft Pumps.

Wells equipped with line shaft pumps shall:

(i) have the casing firmly connected to the pump structure or have the casing inserted into the recess extending at least 0.5 inches into the pump base,

(ii) have the pump foundation and base designed to prevent fluids from coming into contact with joints between the pump base and the casing,

(iii) be designed such that the intake of the well pump is at least ten feet below the maximum anticipated drawdown elevation,

(iv) avoid the use of oil lubrication for pumps with intake screens set at depths less than 400 feet (see R309-515-8(2)[~~102-4.7~~] for additional requirements of lubricants).

(c) Submersible Pumps.

Where a submersible pump is used:

(i) The top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables.

(ii) The electrical cable shall be firmly attached to the riser pipe at 20 foot intervals or less.

(iv) The intake of the well pump must be at least ten feet below the maximum anticipated drawdown elevation.

(d) Pitless Well Units and Adapters.

Pitless well units and adapters shall:

(i) not be used unless the specific application has been approved by the Executive Secretary,

(ii) terminate at least 18 inches above final ground elevation or three feet above the highest known flood elevation whichever is greater,

(iii) be approved by NSF International [~~or the Pitless Adapter Association~~]or other appropriate Review Authority and meet the Pitless Adapter Standard (PAS-97) of the Water Systems Council,

(iv) have suitable access to the interior of the casing in order to disinfect the well,

(v) have a suitable sanitary seal or cover at the upper terminal of the casing that will prevent the entrance of any fluids or

contamination, especially at the connection point of the electrical cables,

(vi) have suitable access so that measurements of static and pumped water levels in the well can be obtained,

(vii) allow at least one check valve within the well casing,

(viii) be furnished with a cover that is lockable or otherwise protected against vandalism or sabotage,

(ix) be shop-fabricated from the point of connection with the well casing to the unit cap or cover,

(x) be of watertight construction throughout,

(xi) be constructed of materials at least equivalent to and having wall thickness compatible to the casing,

(xii) have field connection to the lateral discharge from the pitless unit of threaded, flanged or mechanical joint connection,

(xiii) be threaded or welded to the well casing. If the connection to the casing is by field weld, the shop assembled unit must be designed specifically for field welding to the casing. The only field welding permitted on the pitless unit will be that needed to connect a pitless unit to the casing, and

(xiv) have an inside diameter as great as that of the well casing, up to and including casing diameters of 12 inches, to facilitate work and repair on the well, pump, or well screen.

(e) Well Discharge Piping.

The discharge piping shall:

(i) be designed so that the friction loss will be low,

(ii) have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided,

(iii) be protected against the entrance of contamination,

(iv) be equipped with (in order of placement from the well head) a smooth nosed sampling tap, a check valve, a pressure gauge[~~, a means of measuring flow~~] and a shutoff valve,

(v) be equipped with a means of measuring flow, located either upstream or downstream of the check valve in accordance with manufacturers recommendations, having a totalizer readout consistent with quantity of water treated in disinfection reports,

(vi)[~~(v)~~] where a well pumps directly into a distribution system, be equipped with an air release vacuum relief valve located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least six inches above the floor and covered with a No. 14 mesh corrosion resistant screen. An exception to this requirement will be allowed provided specific proposed well head valve and piping design includes provisions for pumping to waste all trapped air before water is introduced into the distribution system,

(vii)[~~(vi)~~] have all exposed piping valves and appurtenances protected against physical damage and freezing, and

(viii)[~~(vii)~~] be properly anchored to prevent movement[~~, and~~].

(f) Water Level Measurement.

(i) Provisions shall be made to permit periodic measurement of water levels in the completed well.

(ii) Where permanent water level measuring equipment is installed it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and installed in such a manner as to prevent entrance of foreign materials into the well casing.

(g) Observation Wells.

Observation wells shall be:

(i) constructed in accordance with the requirements for permanent wells if they are to remain in service after completion of a water supply well, and

(ii) protected at the upper terminal to preclude entrance of foreign materials.

(h) Electrical Protection.

Sufficient electrical controls shall be placed on all pump motors to eliminate electrical problems due to phase shifts, surges, lightning, etc.

(13) Well House Construction.

The use of a well house is strongly recommended, particularly in installations utilizing above ground motors.

In addition to applicable provisions of R309-540[~~209~~], well pump houses shall conform to the following:

(a) Casing Projection Above Floor.

The permanent casing for all ground water wells shall project at least 12 inches above the pump house floor or concrete apron surface and at least 18 inches above the final ground surface. However, casings terminated in underground vaults may be permitted if the vault is provided with a drain to daylight sized to handle in excess of the well discharge rate[~~flow~~] and surface runoff is directed away from the vault access.

(b) Floor Drain.

Where a well house is constructed the floor surface shall be at least six inches above the final ground elevation and shall be sloped to provide drainage. A "drain-to-daylight" shall be provided unless highly impractical.

(c) Earth Berm.

Sites subject to flooding shall be provided with an earth berm terminating at an elevation at least two feet above the highest known flood elevation or other suitable protection as determined by the Executive Secretary.

(d) Well Casing Termination at Flood Sites.

The top of the well casing at sites subject to flooding shall terminate at least 3 feet above the 100 year flood level or the highest known flood elevation, whichever is higher (refer to R309-515[~~204~~]-6(6)(b)[~~(vi)~~]).

(e) Miscellaneous.

The well house shall be ventilated, heated and lighted in such a manner as to assure adequate protection of the equipment (refer to R309-540[~~209~~]-5(2)[~~(a) through (h)~~].

(f) Fencing.

Where necessary to protect the quality of the well water the Executive Secretary may require that certain wells be fenced in a manner similar to fencing required around spring areas.

(g) Access.

An access shall be provided either through the well house roof or sidewalls in the event the pump must be pulled for replacement or servicing the well.

R309-515[~~204~~]-7. Ground Water - Springs.

(1) General.

Springs vary greatly in their characteristics and they should be observed for some time prior to development to determine any flow and quality variations. Springs determined to be "under the direct influence of surface water" will have to be given "surface water treatment".

(2) Source Protection.

Public drinking water systems are responsible for protecting their spring sources from contamination. The selection of a spring should only be made after consideration of the requirements of R309-515[~~204~~]-4. Springs must be located in an area which shall minimize threats from existing or potential sources of pollution. A Preliminary Evaluation Report on source protection issues is required by R309-600[~~113~~]-13(2). If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as described in R309-515[~~204~~]-6(4).

(3) Surface Water Influence.

Some springs yield water which has been filtered underground for years, other springs yield water which has been filtered underground only a matter of hours. Even with proper development, the untreated water from certain springs may exhibit turbidity and high coliform counts. This indicates that the spring water is not being sufficiently filtered in underground travel. If a spring is determined to be "under the direct influence of surface water", it shall be given "conventional surface water treatment" (refer to R309-505[~~202~~]-6).

(4) Outline of Spring Approval Process.

Each of the following submittals shall be accompanied by a completed "project notification form":

(a) Initial[~~Pre-construction~~] Submittal.

Before commencement of construction of spring development improvements the following information must be submitted to the Executive Secretary and approved in writing.

(i)[~~(a)~~] Detailed plans and specifications covering the development work.

(ii)[~~(b)~~] A copy of an engineer's statement indicating:

(A)[~~(i)~~] the historical record (if available) of spring flow variation,

(B)[~~(ii)~~] expected minimum flow and the time of year it will occur,

(C)[~~(iii)~~] expected maximum flow and the time of year it will occur,

(D)[~~(iv)~~] expected average flow,

(E)[~~(v)~~] the behavior of the spring during drought conditions.

After evaluating this information, the Division will assign a "safe[~~firm~~] yield" for the spring which will be used in assessing the number of and type of connections which can be served by the spring (see "safe yield[~~desired design discharge rate~~]" in R309-110[~~200~~]).

(iii)[~~(c)~~] A copy of documentation indicating the water system owner has a right to divert water for domestic or municipal purposes (see R309-515-4(8)) from the spring source.

(iv)[~~(d)~~] A Preliminary Evaluation Report on source protection issues as required by R309-600[~~113~~]-13(1).

(v)[~~(e)~~] A copy of the chemical analyses required by R309-515[~~204~~]-4(5).

(vi)[~~(f)~~] An assessment of whether the spring is "under the direct influence of surface water" (refer to R309-505[~~202~~]-7(1)(a)(i).

(b)[~~(5)~~] Final Submittal[~~Information Required after Spring Development~~].

All items listed in R309-500-9 (especially satisfactory results of microbiological and turbidity sampling of water from the spring after construction and flushing is complete), along with information on the discharge rate developed from the spring, shall be submitted and an Operating Permit obtained before any water from the spring is introduced into a public water system[~~After development of a culinary spring, the following information shall be submitted:~~

~~(a) Proof of satisfactory bacteriologic quality.~~

~~(b) Information on the rate of flow developed from the spring.~~

~~(c) As-built plans of spring development.~~

~~(6) Operation Permit Required.~~

~~Water from the spring can be introduced into a public water system only after it has been approved for use, in writing, by the Executive Secretary~~].

(5)[~~(7)~~] Spring Development.

The development of springs for drinking water purposes shall comply with the following requirements:

(a) The spring collection device, whether it be collection tile, perforated pipe, imported gravel, infiltration boxes or tunnels shall[~~must~~] be covered with a minimum of ten feet of relatively impervious soil (clay) cover. Such cover shall[~~must~~] extend a minimum of 15 feet in all horizontal directions from the spring collection device. Clean, inert, non-organic material shall be placed in the vicinity of the collection device(s).

(b) Where it is impossible to achieve the ten feet of relatively impervious soil cover, an acceptable alternate will be the use of an impermeable liner provided that:

(i) the liner has a minimum thickness of at least 10 mils,

(ii) all seams in the liner are folded or welded to prevent leakage,

(iii) the liner is certified as complying with ANSI/NSF Standard 61. This requirement is waived if certain that the drinking water will not contact the liner,

(iv) the liner is installed in such a manner as to assure its integrity. No stones, two inch or larger or sharp edged, shall be located within two inches of the liner,

(v) a minimum of two feet of relatively impervious soil (clay) cover is placed over the impermeable liner,

(vi) the soil and liner cover are extended a minimum of 15 feet in all horizontal directions from the collection devices.

(c) Each spring collection area shall be provided with at least one collection box to permit spring inspection and testing.

(d) Collection piping shall be connected to the collection box in a radial pattern such that there are no bends, tees, or elbows in the lines to impede inspection.

(e)[~~(d)~~] All junction boxes and collection boxes, shall[~~must~~] comply with R309-545[~~210~~]-14 with respect to access manholes, R309-545-15 with respect to air vents, and R309-545-13 with respect to overflow piping.[~~Lids for these spring boxes shall be gasketed and the box adequately vented.~~]

(f)[~~(e)~~] The spring collection area shall be surrounded by a fence located a distance of 50 feet (preferably 100 feet if conditions allow) from all collection devices on land at an elevation equal to or higher than the collection device, and a distance of 15 feet from all collection devices on land at an elevation lower than the collection device. The elevation datum to be used is the surface elevation at the point of collection. The fence shall be at least "stock tight" (see R309-110[~~200~~]). In remote areas where no

grazing or public access is possible, the fencing requirement may be waived by the Executive Secretary. In populated areas a six foot high chain link fence with three strands of barbed wire may be required.

(g)[~~(f)~~] Within the fenced area all vegetation which has a deep root system shall be removed.

(h)[~~(g)~~] A diversion channel, or berm, capable of diverting all anticipated surface water runoff away from the spring collection area shall be constructed immediately inside the fenced area.

(i)[~~(h)~~] A permanent flow measuring device shall be installed. Flow measurement devices such as critical depth meters or weirs shall be properly housed and otherwise protected.

(j)[~~(i)~~] The spring shall be developed as thoroughly as possible so as to minimize the possibility of excess spring water ponding within the collection area. Where the ponding of spring water is unavoidable, the excess shall be collected by shallow piping or french drain and be routed beyond and down grade of the fenced area required above, whether or not a fence is in place.

R309-515[~~204~~]-8. Operation and Maintenance.

(1) Spring Collection Area Maintenance.

(a) Spring collection areas shall be periodically (preferably annually) cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas and diversion channel is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Executive Secretary. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development construction meets the requirements of these rules.

(2) Pump Lubricants.

The U.S. Food and Drug Administration (FDA) has approved propylene glycol and certain types of mineral oil for occasional contact with or for addition to food products. These oils are commonly referred to as "food-grade mineral oils". All oil lubricated pumps shall utilize food grade mineral oil suitable for human consumption as determined by the Executive Secretary.

(3) Algicide Treatment.

No algicide shall be applied to a drinking water source unless specific approval is obtained from the Division. Such approval will be given only if the algicide is certified as meeting the requirements of ANSI/NSF Standard 60, Water Treatment Chemicals - Health Effects.

KEY: drinking water, source development, source maintenance, water rights
[~~January 1, 1998~~]2001 **19-4-104**

◆ ◆

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-63

Medicaid Policy for Pharmacy Reimbursement

NOTICE OF PROPOSED RULE
(New)
DAR FILE NO.: 23347
FILED: 11/30/2000, 11:26
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This is a new rule. The purpose of the rule is to establish Medicaid pharmacy reimbursement criteria

SUMMARY OF THE RULE OR CHANGE: The Medicaid Pharmacy Program reimbursement criteria will be established by rule. The current dispensing fee will be reduced by thirty cents for both rural and urban pharmacy providers effective September 15, 2000, to keep reimbursement within Legislative appropriations. The current payment of Average Wholesale Price minus 12% will remain the same.
(**DAR Note:** A corresponding 120-day (emergency) rule that is effective as of December 1, 2000, is under DAR No. 23347 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-2-5; and Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Department should realize a savings of approximately $700,000 annually.
❖LOCAL GOVERNMENTS: This rule does not apply to local government, so there is no budget impact.
❖OTHER PERSONS: Pharmacy providers will see a reduction in reimbursement of about $700,000 per year.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Pharmacy providers will see a thirty cent decrease in reimbursement for each prescription filled for a Medicaid recipient.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department has a $2,400,000 shortfall in funding to maintain the current level of pharmacy reimbursement. The Department originally proposed to alter pharmacy reimbursement by adjusting the payment based on the Average Wholesale Price (AWP). Currently pharmacists receive AWP minus 12%. To realize the necessary savings this would have been adjusted to AWP minus 15%. Negotiations with the pharmacy industry

identified other savings that should reduce the shortfall to $700,000. Rather than making the cut by adjusting the payment to AWP minus 13%, those in the negotiations felt that a thirty cent reduction in the dispensing fee was preferable. These issues will be carefully evaluated after the public comment period. A commitment was made to the pharmacy representatives that the thirty cent dispensing fee reduction would be restored if they identified other cost saving initiatives that would produce comparable savings. Rod L. Betit

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
RaeDell Ashley at the above address, by phone at (801) 538-6495, by FAX at (801) 538-6099, or by Internet E-mail at rashley@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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-63. Medicaid Policy for Pharmacy Reimbursement.
R414-63-1. Introduction and Authority.

(1) The Medicaid Policy for reimbursement of dispensing fees for pharmacy providers was achieved through negotiations with representatives of the pharmacy industry.

(2) This rule is authorized under Chapter 26-18.

R414-63-2. Pharmacy Reimbursement.

For each prescription filled for a Medicaid recipient the pharmacy provider shall receive:

(1) the average wholesale price for the medication minus 12%; and

(2) a dispensing fee in the amount of $3.60 for urban providers and $4.10 for rural providers. This amount reflects a reduction of thirty cents for both urban and rural providers when this rule takes effect.

R414-63-3. Periodic Evaluation of Reimbursement.

(1) This decrease to the dispensing fee may be adjusted if other areas can be identified in the pharmacy program where significant cost saving measures can be implemented.

(2) The Department shall periodically evaluate reimbursement to pharmacy providers and make adjustments to reimbursement as appropriate.

KEY: medicaid
2001 **26-18**

◆ ◆

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-309
Utah Medical Assistance Program (UMAP) General Eligibility Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23349
FILED: 11/30/2000, 11:26
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The funding for UMAP is inadequate to sustain it at its current level. The intent of the rule is to reduce the number of eligible individuals.

SUMMARY OF THE RULE OR CHANGE: Eliminate eligibility for full-time students. Eliminate eligibility for spouses of full-time students when the full-time student and his or her spouse are living together in the same household. Require that in order to become eligible, an individual's averaged monthly income from the 12 months prior to the month of application as well as the countable monthly income for the month of application, and any on-going months be at or below the UMAP Basic Maintenance Standard (BMS). Eliminate the provision that allows persons whose countable income exceeds the UMAP BMS by $50 or less to spenddown. Eliminate the provision for any UMAP coverage prior to the date of application.
(**DAR Note:** A corresponding 120-day (emergency) rule that is effective as of December 1, 2000, is under DAR No. 23348 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-10

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Anticipated aggregate cost savings for the Department is $213,400.
❖LOCAL GOVERNMENTS: This rule does not apply to local government, so there is no budget impact.
❖OTHER PERSONS: There will be a reduction of the number of eligible individuals as a result of restrictions in the gaining of

eligibility. Because of fewer eligibles, providers will notice fewer individuals that can be provided services. Advocates probably will oppose this rule, but do not sustain any budget impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs are as described in Aggregate or Anticipated cost or savings to: State, Local governments and Other Persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department has worked closely with advocacy groups and providers to minimize the cuts imposed by this rule. The UMAP must operate within the appropriation authorized by the Utah Legislature. The changes in program benefits and eligibility imposed by this rule are necessary and unavoidable. Rod L. Betit

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Connie Christensen at the above address, by phone at (801) 538-9349, by FAX at (801) 538-6952, or by Internet E-mail at cchriste@email.stste.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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-309. Utah Medical Assistance Program (UMAP).
R414-309-[90]1. UMAP General Eligibility Requirements.

(1[:]) The [d]Department [requires compliance]complies with Section 26-18-10. The [d]Department adopts [Pub. L. No. 104-193 (412), (431), and (435), which is incorporated by reference as amended by]Pub. L. No. 105-33(5302)(c)(2) and (3), (5306)(d), (5307)(a), (5563), (5566), and (5571), which is incorporated by reference.[The department adopts Pub. L. No. 105-33 (5307)(a), and (5566).]

(2[:]) The definitions in R414-1 and R414-301 apply to this rule. In addition, [T]the following definitions apply to this section:

(a[:]) "Unearned income" means cash received by an individual for which the individual performs no service.

(b[:]) "Full-time" employment means an average of 100 or more hours of work per month or an average of 23 hours per week.

(c[:]) A "bona fide" loan means a loan [which]that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

(d[:]) "Disregard" means a portion of income that is not counted.

(e) "Full-time student" means a person who is enrolled in any educational program, other than high school, and is attending full time as defined by that educational program.

(3[:]) Conditions of eligibility for UMAP:

(a[:]) Medical need is not a requirement for UMAP eligibility.

(b[:]) An individual ineligible for Medicaid because of resources is not eligible for UMAP assistance.

(c[:]) Individuals ineligible for Medicaid because they will not spenddown or because their medical expense is less than the spenddown, are not eligible for UMAP assistance.

(d) An individual who is a full-time student is not eligible for UMAP assistance. The spouse of a full-time student is not eligible for UMAP assistance if the full-time student and his or her spouse are living together or are not legally separated and have been separated for less than six months.

(4[:]) Citizenship requirements for UMAP:

[a.]Temporary entrants into the U.S. and those who have no registration card are not eligible for UMAP assistance. To be eligible for UMAP, the individual must be one of the following:

[i.](a) U.S. born or a naturalized citizen;

[ii.](b) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply, or who is a member of an Indian tribe as defined in section 4(e) of the Indian Self-determination and Education Assistance Act;

[iii.](c) Residents from Freely Associated States;

[iv.](d) A qualified alien, as defined in Pub. L. No. 104-193 (431), as amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571) who was admitted into the United States prior to August 22, 1996.

[v.](e) A qualified alien, newly admitted into the United States on or after August 22, 1996, is not eligible for UMAP services for five years from the person's date of entry into the United States, unless the person is:

[A.](i) A refugee admitted under section 207 of the Immigration and Nationality Act;

[B.](ii) An individual granted asylum under section 208 of the Immigration and Nationality Act;

[C.](iii) An individual whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act, (as in effect immediately before the effective date of section 307 of division C of Pub. L. No. 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Pub. L. No. 104-208);

[D.](iv) A Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980;

[E.](v) An Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act,[m] 1989, Pub. L. No. 100-461, as amended);

[~~F.~~](vi) An honorably discharged veteran from the Armed Forces of the United States, the spouse of a United States veteran, or the unremarried spouse of a deceased United States veteran;

[~~G.~~](vii) An individual on active duty in the Armed Forces of the United States or the spouse of such an individual;

[~~H.~~](viii) A Hmong or Highland Lao veteran who fought on behalf of the Armed Forces of the United States during the Vietnam conflict who has been lawfully admitted to the United States for permanent residence is considered a veteran for the purpose of determining eligibility.

(5[~~.~~]) Residence requirements for UMAP:

[~~a.~~]To be eligible for UMAP assistance, an individual must be a Utah resident. To be considered a Utah resident, a person must meet one of the following guidelines:

[~~i.~~](a) The client must live in Utah for 30 days prior to the need for medical services.

[~~ii.~~](b) The client must show intent to reside in the state permanently. If a client shows intent to reside in the State permanently, eligibility can begin no earlier than the date the client entered the state.

[~~b.~~](c) Any person who is a resident of a prison, jail or halfway house is not eligible for UMAP assistance. A person may qualify in the month in which he enters or leaves a prison, jail or halfway house. The program will not pay for services while the person is in custody. It does not matter if the condition was pre-existing. No payment will be made for any medical problems which arise during the commission of a crime or during an arrest.

(6[~~.~~]) All recipients of General Financial Assistance (GA) are eligible for UMAP assistance.

(7[~~.~~]) The Department shall determine [~~I~~]income eligibility[~~calculation~~] for UMAP as follows:

[~~a. Eligibility for UMAP is based on a best estimate of income as follows:~~

~~i. The department shall budget income and determine the best estimate in the same manner as Medicaid in R414-304-407.~~](a) At application, the Department shall total the actual countable income received in the 12 months prior to the application month, divide the total by 12 to arrive at a monthly average and compare the monthly average to the UMAP BMS for the household size.

(b) Persons whose averaged monthly countable income as determined in R414-309-1(7)(a) exceeds the UMAP BMS are not eligible for UMAP assistance.

(c) If the averaged monthly countable income as determined in R414-309-1(7)(a) does not exceed the UMAP BMS, the Department shall budget income and determine the best estimate for the application month and any ongoing month in the same manner as described in R414-304-7.

(d) The Department shall compare the countable income as determined by R414-309-1(7)(c) to the UMAP BMS for the household size. Persons with countable income in the application month or any ongoing month that exceeds the UMAP BMS are not eligible for UMAP assistance for that month.

(e) In determining the countable income for the 12 months prior to the application month, the application month, and ongoing months, the Department shall count all income received except:

[~~ii. The department shall count all income received except:~~

~~A.~~](i) a bona fide loan of money which must be repaid;

[~~B.~~](ii) rental subsidies;

[~~C.~~](iii) trust funds that are not available on demand;

[~~D.~~](iv) GA, AFDC, or Refugee Cash Assistance (RCA) grants;

[~~E.~~](v) HEAT assistance;

[~~F.~~](vi) attendant care received by a handicapped person from the Division of Services to the Handicapped if the money is used to pay for attendant care, and the person providing the care is not included in the household's basic maintenance standard (BMS);

[~~G.~~](vii) insurance settlements for destroyed property, if the income is actually used to replace the property. If the insurance settlement is more than the replacement cost of the new property, the difference is counted as income.

[~~H.~~](viii) unearned income in-kind.

[~~I.~~](ix) special payments to American Indians.

[~~iii.~~](c) The following deductions are allowed:

[~~A.~~](i) payments for a health or accident insurance policy;

[~~B.~~](ii) federal taxes are determined by multiplying the number of exemptions by $162.50, subtracting that amount from the wages, and comparing the remainder to the appropriate tax tables for a single or married person. Tax computation is as follows:

TABLE

Single Person Including Head of Household.

Wages			Income Tax		
<$ 89			$ 0		
89 -	$1,575		0	plus 15% of Excess Over	$ 89
1,576 -	3,683		223.13	plus 28% of Excess Over	1,576
3,684 -	8,461		831.46	plus 33% of Excess Over	3,684
8,462 +			2,390.03	plus 28% of Excess Over	8,462

Married Person Including Head of Household.

Wages			Income Tax		
<$ 255			$ 0		
255 -	$ 2,733		0	plus 15% of Excess Over	$ 255
2,734 -	6,246		371.88	plus 28% of Excess Over	2,734
6,247 -	15,422		1,355.38	plus 33% of Excess Over	6,247
15,423 +			4,383.40	plus 28% of Excess Over	15,423

[~~C.~~](iii) state taxes, as determined by multiplying the federal tax by .45;

[~~D.~~]FICA. If the client is self-employed, this is determined by multiplying monthly earnings by .1503. If the client is not self-employed, this is determined by multiplying monthly earnings by .0765.

[~~iii. Compare the figure derived from the above calculation to the BMS for the household size. This figure is called countable income. Persons with countable income above the BMS may spenddown to the BMS level, if the spenddown amount is $50.00 or less. The Department will not collect a spenddown for amounts of less than $1.00.~~

~~iv.~~](c) The UMAP income standard is as follows:

TABLE

Household Size	UMAP Income Standard (BMS)
1	337
2	413
3	516
4	602
5	686
6	756
7	792
8	829

9	868
10	904
11	941
12	978
13	1016
14	1053
15	1090
16	1128

(8[~~.~~]) When an individual's check amount differs from the entitlement amount, the check amount is used to determine income eligibility only if the reduction is involuntary.

(9[~~.~~]) Self-employment income:

[~~a.~~]Income from self-employment is counted. Deductions are allowed for the cost of doing business. Allowable deductions include:

[~~i.~~](a) labor;

[~~ii.~~](b) stock;

[~~iii.~~](c) raw materials;

[~~iv.~~](d) seed and fertilizer;

[~~v.~~](e) taxes and interest paid for income-producing property;

[~~vi.~~](f) insurance premiums;

[~~vii.~~](g) transportation costs only if the person must move from place to place in the course of business.

[~~b.~~](10) Deductions for income-producing property include:

[~~i.~~](a) property taxes;

[~~ii.~~](b) insurance;

[~~iii.~~](c) incidental repairs;

[~~iv.~~](d) advertising;

[~~v.~~](e) landscaping;

[~~vi.~~](f) utilities.

[~~c.~~](11) The cost of an addition or increase in value of the rental property is not allowed as a deduction.

[~~10.~~](12) UMAP budgeting methods:

(a[~~.~~]) Income shall be budgeted prospectively. Information provided by the client is used to determine the amount of income the client expects to receive during the eligibility period.

(b[~~.~~]) Farm and self-employment income is prorated over the number of months in which the money was earned if the income is received less often than monthly. The prorated amount is counted for the same number of months in which the money was earned. The month in which the money was received is counted as the first month, even if the money is not actually earned in that month.

(c[~~.~~]) Student grants and scholarships are prorated over the number of months the grants or scholarships are intended to cover. The first month it is intended to cover is the first budget month. If it is received after the first month it is intended to cover, the client is not liable for an understated liability based on receipt of this income.

(d[~~.~~]) Deferred income counts when it is available if it is not deferred by choice. If it is deferred by choice, it is counted for the months it could have been received.

(e[~~.~~]) Only student income and farm or self-employment income are prorated.

(f[~~.~~]) Lump sum payments can be earned or unearned income. Lump sums are income in the month received. An overpayment may exist for the month of receipt. Any amount remaining will count as a resource for the month following the month of receipt.

[~~11.~~](13) [~~Retroactive~~]UMAP coverage begins the date a completed, signed application is received by the Department. There is no provision for retroactive UMAP coverage.[~~no earlier than the first day of the month prior to the month of application. Coverage begins no later than the first day of the month in which an individual is determined eligible.~~]

[~~12.~~](14) The income of all individuals included in the BMS is used to determine eligibility.

[~~13.~~](15) Individuals included in the UMAP BMS:

(a[~~.~~]) A legally married spouse is included in the BMS if the couple lives together or they have not been separated more than six months. The spouse is not included if the couple is legally separated.

(b[~~.~~]) An unmarried person of the opposite sex who lives with the client is included in the BMS if the client is emancipated and the couple present themselves to the community as husband and wife.

(c[~~.~~]) Unemancipated children living with the client are included in the BMS if the client is emancipated. This includes natural, adopted, or stepchildren. Unborn children are not included in the BMS.

(d[~~.~~]) Parents living with the client are included in the BMS if the client is unemancipated. This includes natural, adopted or stepparents.

(e[~~.~~]) Unemancipated children of the client's parents are included in the BMS if they live with the parents and the client is unemancipated.

[~~14.~~](16) The client must report any change which may affect eligibility within ten days of the day the client learns of the change. Clients must report income from a new source within ten calendar days of the date the client receives money from that new source.

[~~15.~~](17) UMAP resource requirements:

(a[~~.~~]) The resource limit is $500 for a BMS of one and $750 for a BMS of two or more.

(b[~~.~~]) Countable resources include anything of value that is available to the person. When a person is part owner of property, the property is a resource only if the person has a legal right to sell the property. Only the equity value of the resource is counted.

(c[~~.~~]) If the resource limit is met at any time in the month, it is met for the entire month.

(d[~~.~~]) The following resources are exempt and are not counted to determine eligibility:

(i[~~.~~]) one home, including a mobile home;

(ii[~~.~~]) the lot upon which the home stands if the home is occupied by the client. If the lot on which the home stands exceeds the average size of residential lots in the community where it is, the equity value of the property that is larger than an average size lot is a resource;

(iii[~~.~~]) water rights attached to the home or lot occupied by the client;

(iv[~~.~~]) Contents of the home worth less than $1000 that are essential to daily living;

(v[~~.~~]) one vehicle;

(vi[~~.~~]) an irrevocable burial trust;

(vii[~~.~~]) one burial plot or space for any member of the client's immediate family;

(viii[~~.~~]) funds from a student loan, grant, or scholarship are exempt until the month following the end of the period the loan, grant, or scholarship is intended to cover;

(ix[~~.~~]) a life estate which serves as the primary residence of the client;

(x[~~-~~]) Lump sum insurance payments for destroyed property if the available money is used within ninety days to replace the destroyed property. All other lump sums are a resource in the month following the month of receipt.

(e[~~-~~]) The resources of everyone in the BMS are counted to determine eligibility.

(f[~~-~~]) Individuals are not sanctioned for transferring resources unless the transfer was made to become eligible for UMAP. If property is transferred in order to meet resource limitations, the person is ineligible for the month the transfer is made, and for the next five months. If the client regains the transferred resource and uses the resource to meet normal expenses, the sanction will be removed.

[~~16.~~](18) The UMAP clinic in Utah, Weber, Morgan, and Salt Lake Counties shall determine what services they will cover. The worker in all other counties shall determine what services they will cover.

[~~17.~~](19) Cooperation in collecting third party liability information is an eligibility requirement for UMAP assistance.

KEY: UMAP
[~~May 18, 1998~~]2001 **26-18**
Notice of Continuation February 6, 1998

Health , Health Care Financing, Medical Assistance Program
R420-1
Utah Medical Assistance Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23351
FILED: 11/30/2000, 11:26
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The funding for UMAP is inadequate to sustain it at its current level. The intent of the rule is to reduce the services, and the cost of services paid for by UMAP for eligible individuals.

SUMMARY OF THE RULE OR CHANGE: In order to save costs for Utah Medical Assistance Program (UMAP), there will be reductions in the amounts paid to providers, certain co-payments assigned to eligible individuals, and elimination of certain benefits formerly paid by UMAP
(**DAR Note:** A corresponding 120-day (emergency) rule that is effective as of December 1, 2000, is under DAR No. 23350 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-10

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Anticipated aggregate cost savings for the Department is $656,000.
❖LOCAL GOVERNMENTS: This rule does not apply to local government, so there is no budget impact.
❖OTHER PERSONS: Eligibles and providers will sustain a reduction in benefits. Eligibles will be faced with certain co-payments as well as the elimination of some benefits formerly covered. Providers will sustain a reduction of reimbursement amounts. Advocates probably oppose this rule, but do not sustain any budget impact.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs are as described in Aggregate anticipated cost or saving to: State, Local government and to Other Persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department has worked closely with advocacy groups and providers to minimize the cuts imposed by this rule. The UMAP must operate within the appropriation authorized by the Utah Legislature. The changes in program benefits and eligibility imposed by this rule are necessary and unavoidable. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Health
Health Care Financing,
Medical Assistance Program
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Robert Knudson at the above address, by phone at (801) 538-6416, by FAX at (801) 538-6952, or by Internet E-mail at rknudson@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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R420. Health, Health Care Financing, Medical Assistance Program.
R420-1. Utah Medical Assistance Program.

. . . . . .

R420-1-2. Definitions.
Terms used in this rule are defined in R414-1[~~-1~~], except that "client" shall have the meaning defined below. In addition:

(1) "Chronic condition" means a condition characterized by its long duration or recurrence.

(2) "Client" means a person who has completed a current form MI-13 and been approved for UMAP eligibility.

(3) "Crime" means any felony, misdemeanor, or infraction, of which an individual is eventually convicted[~~;~~]. Crimes also include those to which an individual pleads guilty or no contest, or those to which an individual enters into a diversion agreement as outlined in sections 77-2-5 through 77-2-9 UCA.

(4) "Emergency service" means a medical service performed to treat a condition [~~for which~~]that, in the absence of immediate medical attention, could reasonably be expected to result in death or permanent disability to the client. Immediate medical attention is treatment given within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(5) "Emergency transportation" means an air or ground ambulance required to transport a client in need of an emergency service. UMAP shall not reimburse for emergency transportation services if[~~This does not include any transportation in which~~] a client could have been safely transported by a less costly[~~any other~~] method of transportation.

(6) "In custody" means being detained or held under guard by law enforcement personnel at the scene of a crime or in a detention facility, until unconditionally released, or released on probation or parole. The [~~d~~]Department shall consider a resident of a jail, correctional facility, or half-way house to be in custody.

(7) "Life threatening condition" means a medical condition which, if not immediately treated, poses an imminent danger to life or will result in permanent disability. Disability is the limiting loss or absence of the capacity to perform activities of daily living or occupational demands. Permanent disability occurs when the degree of loss of this capacity becomes static or well-stabilized, and is not likely to improve despite continuing medical or rehabilitative measures.

(8) "Medically indigent" is abbreviated "MI", which is a prefix for UMAP form numbers.

(a) MI-13 is a UMAP form that explains to clients the rights and responsibilities they have as UMAP clients. A MI-13 form is current from the time it is completed until there is a break in eligibility of more than six consecutive months.

(b) MI-706 is a UMAP form entitled "UMAP Reimbursement Agreement" that authorizes reimbursement for a medical service.

(9) "Medically necessary" means reasonably calculated to prevent, diagnose, or cure conditions that endanger life, cause suffering and pain, cause physical deformity or malfunction, or threaten to cause a handicap, and there is no other equally effective course of treatment available or suitable for the client requesting the service that is more conservative or less costly.

(10) "Principal diagnosis at discharge" means the main medical problem, based on the best information available for review by UMAP.

R420-1-3. Client Eligibility Requirements.

(1) To be eligible for UMAP services, clients [~~shall~~]must meet the criteria in R414-309.[~~income and asset limits and other eligibility requirements found in the Medical Assistance Manual, Volume III F, which is incorporated by reference. Manuals~~] These criteria can be viewed[~~at the local Office of Family Support, or~~] at the UMAP administrative office located at 288 N. 1460 W., Salt Lake City, Utah, or at any site where the Department of Workforce Services or the Department of Health determines eligibility for clients.[

~~(2) Eligibility for UMAP services is determined at an Office of Family Support district office.~~]

([~~3~~]2) Before a client can receive services from UMAP, he must have a specific medical need that is within the UMAP scope of services and meets all other UMAP criteria.

R420-1-4. Program Access Requirements.

(1) UMAP has three medical clinics. Each clinic has on its staff a physician, or a physician assistant or nurse practitioner working under the supervision of a physician. For clients who reside in Salt Lake, Weber, Morgan, and Utah counties, if the physician or supervising physician determines it appropriate, the physician, physician assistant, or nurse practitioner shall evaluate and treat the client.

(2) The clinic may[~~shall~~] refer the client outside of the clinic only for treatment of covered conditions that cannot be treated in the clinic. The supervising physician shall decide the conditions that can be treated at the clinic. The clinic manager shall decide the services that are covered under UMAP.

(3) Clients residing in all other counties may contact the nearest Office of [~~Family Support~~]Workforce Services for a form MI-706. This office may then refer the client to a private physician who is willing to treat the client within the guidelines of UMAP criteria.

R420-1-5. Service Coverage.

(1) The scope of services covered by UMAP is limited to treatment of conditions that meet one or more of the following criteria, unless elsewhere excluded:

(a) an acute condition characterized by a rapid onset requiring prompt medical attention. UMAP shall not consider a condition to be[~~not~~] acute once it is medically established to have been in existence for four months or more, regardless of when the client began experiencing symptoms. Recurring conditions are not acute;

(b) a life-threatening condition that is not psychiatric;

(c) a communicable disease that poses a health risk to the general public;

(d) a condition that will result in irreversible blindness if left untreated, blindness meaning no better than 20/200 visual acuity in the better eye after correction.

(e) cataracts, if the correction is no better than 20/60 visual acuity in the better eye.

(f) eyeglasses for a client in a work or training program if the client cannot participate in the work or training without the eyeglasses, or for a diabetic client who cannot see well enough to administer his own medication.

(2) UMAP may cover the following medical services:

(a) outpatient hospital services;

(b) physician services;

(c) midwife and birthing center services;

(d) radiology and lab services;

(e) emergency transportation services for both air and ground;

(f) dental services;

(g) pharmacy services;

(h) rural health services;

(i) home health services for I.V. antibiotics.

(3) For all UMAP covered services, the principal diagnosis at discharge from the hospital is the reason for the care. UMAP may not consider the other diagnoses when determining whether the service is covered by UMAP.

(a) UMAP shall pay a [~~minimal set~~]fixed triage fee for emergency transportation, emergency room physicians, and emergency room facility charges for services that do not result in an inpatient admission, if the admission diagnosis is a UMAP covered medical condition, but the principal diagnosis at discharge is psychiatric.

(b) The [~~minimal set~~]fixed triage fee shall constitute payment for the entire service. A notation on the form MI-706 advises the provider that he received authorization for only the minimal set triage fee.

(4) A provider or a client may resolve questions about coverage of a specific condition or service by contacting the appropriate UMAP clinic in Salt Lake, Morgan, Weber, or Utah counties, or the Office of [~~Family Support~~]Workforce Services for all other counties, depending upon where the client lives.

R420-1-6. Limitations and Excluded Services.

(1) Conditions that are not covered by UMAP include:

(a) chronic pain, back pain, knee pain, joint pain, from recurring or chronic conditions;

(b) hernias that are not strangulated or incarcerated, carpal tunnel syndrome, bunions, nasal polyps;

(c) mental illness or disorder, drug addiction, alcohol addiction;

(d) obesity, hormonal imbalance, bulimia, anorexia nervosa;

(e) long-standing arthritis, except treatment of acute flare-ups is a covered service;

(f) allergies, cataracts, temporomandibular joint dysfunction, premenstrual syndrome, aseptic (avascular) necrosis;

(g) rhinitis, 24-hour gastritis, common cold, any condition for which there is no accepted medical therapy;

(h) a condition that is disabling, but does not meet the criteria listed in R420-1-5(1);

(i) a condition that is not covered by the Utah Medicaid program;

(j) a condition caused because of a snow skiing or snowboarding accident;

(k) a condition caused when the client was committing a crime. UMAP shall allow the client to present information to prove that involvement in the alleged crime did not cause or contribute to his medical condition. The client must submit this information within 60 days of the date of the denial;

(l) a condition caused when the client was being arrested;

(m) a condition caused when the client was injured by a law enforcement officer;

(n) a condition caused when the client was in custody[~~.~~];

(o) a condition that results from experimental or recreational use of drugs or chemicals, (with the exception of drinking distilled spirits, wine, or malt beverages, and smoking or chewing tobacco). UMAP considers use to be experimental or recreational if, on his own initiative, an individual uses:

(i) prescription drugs in a manner that is contrary to the physician's instructions for their use;

(ii) non-prescription drugs or chemicals in a manner that is contrary to package instructions, e.g., sniffing glue or other substances, drinking rubbing alcohol, laxative abuse;

(iii) illegal drugs, e.g., a drug or controlled substance, the use of which is a violation of state or federal law.

(p) UMAP determines use by an evaluation of the best available medical evidence regarding the condition.

(q) UMAP allows clients to present information to prove that experimental or recreational use of drugs or chemicals did not cause or contribute to the medical condition. Clients must submit this information within 60 days of the date of denial.

(2) Services that are not covered by UMAP include:

(a) cosmetic surgery;

(b) tympanoplasties;

(c) hysterectomies and pelvic surgery, except when there is a reasonable suspicion of a life threatening condition;

(d) back surgeries, knee surgeries, joint surgeries, for recurring or chronic conditions;

(e) psychiatry, or any service provided to a client while he is in a psychiatric facility, wing, ward, or bed;

(f) diagnostic work, unless a covered condition is suspected;

(g) speech pathology, audiology (except to rule out a brain tumor), audiometry (except to rule out a brain stem lesion);

(h) medical supplies, except syringes, lancets, test strips for diabetics, and ostomy supplies;

(i) medical equipment, except an oxygen concentrator if required 24 hours a day;

(j) prosthetic devices, except once when the need for the device arises from any authorized surgery;

(k) care in a long-term care facility, physical therapy, rehabilitative services, chiropractic services;

(l) dental work (except for exam, x-ray, and extraction of infected teeth), dentures;

(m) sterilization (tubal ligation, vasectomy, etc.), abortion (unless the life of the mother would be endangered if an abortion were not performed), birth control;

(n) elective surgery, organ transplants;

(o) liver biopsy or use of Interferon when being prescribed for treatment of Hepatitis C;

(p) treatment in a pain clinic;

(q) non-emergency use of an emergency room or emergency transportation;

(r) a service that is not covered by the Utah Medicaid program;

(s) a service if the department determines that there is or was an effective less-costly alternative;

(t) a service provided to treat a medical condition, if the need for treatment arose while the client was in custody;

(u) a service for a condition that is a complication of, or a follow-up service for, a non-covered UMAP service. The only exception would be if the service was not covered as a result of lack of client eligibility[~~.~~];

(v) medication that is prescribed for the treatment of hypercholesterolemia;

(w) D4K anti-ulcer PPIs;

(x) hormones that are prescribed for the treatment of female hypogonadism.

R420-1-7. Form MI-706.

(1) UMAP may only pay for a service authorized on a form MI-706. [~~Generally, t~~]The client must obtain the form MI-706 before the service is provided. The client may obtain the form MI-706 after the service is provided if the service is within UMAP scope of services, meets all other UMAP criteria, and:

(a) is a[~~for~~] follow-up service[~~s~~] for a surgery that UMAP has authorized. Follow-up services are for normal, uncomplicated post-surgery hospitalization, office follow-ups, or other services provided within six weeks of the surgery and directly related to the surgery; or

(b) is [~~for~~]an emergency service; or

(c) is a[~~for~~] service[~~s~~] that was[~~were~~] provided before UMAP approved the client for eligibility, and before the client had completed a current form MI-13. The client must request the form MI-706 no later than one year after the date of service, or the date UMAP approved his eligibility, whichever is later. The client shall provide any documentation that UMAP requires, or the client wants considered, to make scope-of-service decisions.

(2) A client must present the form MI-706 to the provider before receiving any service, except for situations in which there is no UMAP requirement for the client to obtain the form MI-706 prior to receiving the service. If a client presents a form MI-706 to a provider before receiving a service, and the provider accepts the form MI-706, the provider may not hold the client financially liable for the service that was provided, whether or not UMAP reimburses the provider. If a client does not present a form MI-706 to a provider, or if the provider does not accept the form MI-706, the provider may hold the client financially liable for the service and treat the client as a "self-pay" patient. Any time a provider receives a form MI-706, and bills UMAP using the MI-706 number, UMAP shall consider that the provider has accepted the form MI-706.

(3) After a client has completed a current form MI-13 and is approved for UMAP eligibility, he must present a form MI-706 to the provider for all non-emergency services before the services are provided.

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R420-1-9. Reimbursement.

UMAP shall only reimburse Utah Medicaid providers who accept payment from UMAP as payment in full for the service provided. UMAP adopts the Utah Medicaid reimbursement policies and payment rates for services covered by UMAP, with the following exceptions:

(1) outpatient services, and ambulatory surgical center services shall be reimbursed at the Medicaid rate, minus 10%;

(2) physician services, osteopathic services, and services provided by Federally Qualified Health Centers shall be reimbursed at the Medicaid rate, minus 10%;

(3) a client is required to pay a $2 co-pay for each UMAP covered pharmacy item (those billed using a NDC code) each time the item is dispensed or purchased.

[~~-~~]Because inpatient hospital services are not a benefit of UMAP, UMAP shall not reimburse for these services.

R420-1-10. Third Party Liability.

(1) UMAP may not reimburse for covered medical services if payment for the service can be, or could have been, obtained from other third-party sources. If partial payment is made by a third-party payor, UMAP shall pay the difference up to the limits set by Medicaid.

(2) Clients and providers shall disclose potentially liable third parties. When any other coverage is available (such as treatment at the Veterans Administration Hospital), the UMAP clinic or provider shall refer the client there for treatment, and UMAP may not authorize payment for those services.

(3) Clients who are potentially eligible for services through the Ryan White Title II Aids Drug Assistance Program (ADAP) must apply for, and follow through with their application for ADAP. UMAP shall not pay if the client fails to cooperate in obtaining benefits through that program.

R420-1-11. Client Rights and Responsibilities.

(1) The client shall make an appointment to see office or clinic staff.

(2) If a client misses an appointment in a UMAP clinic, the client shall have [~~either of~~]two options regarding future appointments. The client may[~~can~~] come in as a walk-in and wait to be seen on a first-come-first-served basis after clients who have appointments, or the client may[~~can~~] make a co-payment before being seen at his next appointment. The co-payment is $1 for missing one appointment, $2 for missing two consecutive appointments, and $3 for missing three consecutive appointments. If the client misses more than three consecutive appointments, the client must come in as a walk-in and wait to be seen on a first-come-first-served basis after clients who have appointments. Clients may cancel UMAP clinic appointments up to two hours before the appointment with no penalty.

(3) If a client misses an appointment with a private provider, the client shall make a $5 co-payment to UMAP for each of the client's next two appointments with private providers before the client will be given a form MI-706 for these appointments. If the client keeps these appointments, UMAP will refund the $5 as soon as the client returns to UMAP and UMAP verifies that the client kept the appointment. UMAP shall consider appointments with private providers to be missed if the client cancels the appointment less than 24 hours before the appointment.

(4) UMAP may deny services to a client who verbally or physically abuses a member of the UMAP staff.

(5) UMAP shall send a Notice of Denial to a client who is denied coverage for a requested medical treatment. If a client or a provider is aggrieved by any action or inaction of the department, the person aggrieved may request a hearing in accordance with R410-14. A provider does not have standing to contest issues concerning scope of services or the client's eligibility status.

(6) The client shall be responsible for making a timely request for a form MI-706. If he fails to obtain the form MI-706, the client shall be liable for any costs incurred.

KEY: indigent, medicaid, UMAP

[~~November 28, 1995~~]2001	**26-1-5**
Notice of Continuation July 21, 1997	**26-18-10**

Health, Health Systems Improvement, Emergency Medical Services
R426-2
Air Medical Services Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23344
FILED: 11/30/2000, 05:53
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Recommendations made by the Air Medical Services Subcommittee.

SUMMARY OF THE RULE OR CHANGE: The Air Medical Services Subcommittee made the recommendation that all out-of-state air services that provide patient care in Utah must be licensed in Utah. The Rule currently states that the Subcommittee shall review each application for licensure; however, the new Emergency Medical Services (EMS) Systems Act gives authority for licensure to the Department, not the (EMS) Committee, thus the change regarding recommendations by the subcommittee.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The proposed changes will not require the state to expend funds beyond the licensing fees paid by out-of-state air ambulance services that choose to become licensed in Utah.
❖LOCAL GOVERNMENTS: Local governments are not affected by this change and will not experience any cost or savings because of these changes.
❖OTHER PERSONS: An out-of-state air ambulance that wishes to transport patients into or out of Utah must pay an annual $500 licensing fee. If an air ambulance service is not Commission on Accreditation Transport Systems (CAMTS) certified, it will cost the service at least $1,000 to obtain that certification. Aggregate costs vary, depending on how many out-of-state air ambulance services request Utah certification. Assuming that five out-of-state air ambulance services request a Utah license, the annual cost is about $7,500.
COMPLIANCE COSTS FOR AFFECTED PERSONS: An out-of-state air ambulance that wishes to transport patients into or out of Utah must pay an annual $500 licensing fee. If the air ambulance service is not (CAMTS) certified, it will cost the service at least $1,000 for that certification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: CAMTS is nationally recognized certification. All of the out-of-state services that have applied are CAMTS certified. The $500 cost to license these services is reasonable and appropriate. Citizens of the state will be protected from unsafe providers by requiring this certification. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Health
Health Systems Improvement,
Emergency Medical Services
Cannon Health Building
288 North 1460 West
PO Box 142004
Salt Lake City, UT 84114-2004 , or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Leslie Johnson at the above address, by phone at (801) 538-6292, by FAX at (801) 538-6808, or by Internet E-mail at ljjohnso@doh.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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-2. Air Medical Service Rules.

. . . . . .

R426-2-2. [~~Definitions.~~
~~As used in Rule R426-2:~~
~~(1) Advanced Life Support means an advanced level of pre-hospital and inter-hospital emergency care that includes basic life support functions plus some or all of the following techniques or procedures: cardiac monitoring, cardiac defibrillation, electrocardiography, administration of specific medications, drugs, and solutions, use of adjunctive medical devices, trauma care, and other techniques and procedures authorized by the committee.~~
~~(2) Air medical personnel means the pilot and patient care personnel who are involved in an air medical transport.~~
~~(3) Air Medical Service means any publicly or privately owned organization that is licensed or applies for licensure under R426-2.~~
~~(4) Air Ambulance means any privately or publicly owned air vehicle specifically designed, constructed, or modified, which is intended to be used for and is maintained or equipped with the intent to be used for, maintained or operated for the transportation of individuals who are sick, injured, or otherwise incapacitated or helpless.~~
~~(5) Air Medical Service Medical Director means a physician knowledgeable of potential medical complications which may arise because of air medical transport, and is responsible for overseeing and assuring that the appropriate air ambulance, medical personnel,~~

~~and equipment are provided for patients transported by the air ambulance service.~~

~~(6) Air Medical Transport Service means the transportation and care of patients by air ambulance.~~

~~(7) CAMTS is the acronym for the Commission on Accreditation of Medical Transport Systems, which is a non-profit organization dedicated to improving the quality of air medical services.~~

~~(8) Committee means the State Emergency Medical Services Committee.~~

~~(9) Department means the Utah Department of Health.~~

~~(10) Director means the Director of the Utah Department of Health.~~

~~(11) License means the authorization issued by the Department to a person to provide emergency medical services.~~

~~(12) License Officer means the Director of the Department or the Director's designee.~~

~~(13) Medical Control means direction and advice provided by medical personnel at a designated medical facility to pre-hospital advanced life support personnel by radio or telephonic communications, written protocol, or direct verbal order.~~

~~(14) Patient means an individual who, as the result of illness or injury, needs immediate medical attention, whose physical or mental condition presents an imminent danger of loss of life or significant health impairment, or who may be otherwise incapacitated or helpless as a result of a physical or mental condition.~~

~~(15) Permit means the authorization issued by the Department in respect to an air ambulance used or to be used to provide air medical transport services.~~

~~(16) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind, public or private.~~

~~(17) Physician means a medical doctor licensed to practice medicine in Utah.~~

~~(18) PA means a licensed Physician's Assistant.~~

~~(19) Pilot means any individual licensed under Federal Aviation Regulations, Part 135.~~

~~(20) Quality Management means a total process of continually monitoring, assessing, and improving the quality of the service.~~

~~(21) Quality Management Director means the person who is the quality management team leader.~~

~~(22) Resource Hospital means a facility designated by the EMS Committee which assumes medical leadership and medical control for the provision of advanced life support services in a specified geographical area.~~

~~(23) RN means a registered nurse.~~

~~(24) RT means a registered respiratory therapist.~~

~~(25) Specialized Life Support Air Medical Service means a level of care which requires equipment or speciality patient care by one or more medical personnel in addition to the regularly scheduled air medical team.~~

~~R426-2-3.~~] Requirements for Licensure.

(1) The Department may issue licenses and vehicle permits to air medical services conforming to R426-2 for Advanced Life Support Air Medical Service and for Specialized Life Support Air Medical Service. A Specialized Life Support Air Medical Service license must list, on the license, the specialities for which the Specialized Life Support Air Medical Service is licensed.

(2) A person may not furnish, operate, conduct, maintain, advertise, or provide air medical transport services to patients within the state or from within the state to out of state[~~more than once in a twelve month period~~] unless licensed by the Department.

(3) An air medical service shall comply with all state and federal requirements governing the specific vehicles utilized for air medical transport services.

(4) An air medical service must provide air medical services 24 hours a day, every day of the year as allowed by weather conditions except when the service is committed to another medical emergency or is unavailable due to maintenance requirements.

(5) To become licensed as an air medical service, an applicant must submit to the Department an application and appropriate fees for an original license which shall include the following:

(a) Certified Articles of Incorporation, if incorporated.

(b) The name, address, and business type of the owner of the air medical service or proposed air medical service.

(c) The name and address of the air ambulance operator(s) providing air ambulance(s) to the service.

(d) The name under which the applicant is doing business or proposes to do business.

(e) A statement summarizing the training and experience of the applicant in the air transportation and care of patients.

(f) A description and location of each dedicated and back-up air ambulance(s) procured for use in the air medical service, including the make, model, year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics.

(g) A copy of current Federal Aviation Administration(FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations.

(h) A copy of the current certificate of insurance for the air ambulance.

(i) A copy of the current certificate of insurance demonstrating coverage for medical malpractice.

(j) The geographical service area, location and description of the place or places from which the air ambulance will operate.

(k) Name of the training officer responsible for the air medical personnel continuing education.

(l) The name of the air medical service medical director.

(m) A proposed roster of medical personnel which includes level of certification or licensure.

(n) A statement detailing the level of care for which the air medical service wishes to be licensed, either advanced or specialized.

(6) Upon receipt of an appropriately completed application for an air medical service license and submission of license fees, the Department shall collect supporting documentation and review each application.[~~The Air Ambulance Subcommittee shall review each application and make recommendations to the Department for licensure based upon type of service to be offered, equipment and trained personnel. Public need and necessity requirements of Subsection 26-8a-412 are superseded by federal law.~~] After review [~~and recommendation by the Air Ambulance Subcommittee,~~]and before issuing a license to a new air medical service, the Department shall directly inspect the vehicle(s), the air medical equipment, and required documentation.

(7) The Department shall issue an air medical service license and air ambulance permit for a period of four years from the date of issue and which shall remain valid for the period unless revoked or suspended by the Department. The department may conduct inspections to assure compliance.

(8) Upon change of ownership, an air medical service license and air ambulance permit terminates and the new owner or operator must file within ten business days of acquisition an application for renewal of the air medical service license and air ambulance permit.

(9) Air medical services must have an agreement to allow hospital emergency department physicians, nurses, and other personnel who participate in emergency medical services to fly on air ambulances.

(10) Air medical services must provide reports to the Department, for each mission made, on forms or a data format specified by the Department.

(11) Effective July 1, 1998, successful completion of the CAMTS certification process is required for licensure and relicensure by the Department as an air medical service.

(a) Air medical services licensed under R426-2 as of July 1, 1997 must achieve CAMTS certification as of July 1, 1998, and meet requirements of R426-2 for relicensure.

(b) Air medical services licensed under R426-2 after July 1, 1997 must submit an application for CAMTS certification within one year of receiving a license under this rule.

R426-2-[~~4~~]3. Personnel Requirements.

(1) Emergency Medical Technicians and Paramedics, when responding to a medical emergency, shall display their certification patch or identification card on outer clothing to identify competency level at the scene.

(2) Air medical service providing basic life support must have at least one medical attendant who is an Emergency Medical Technician-Intermediate (EMT-I), EMT-Paramedic, Physician's Assistant, Registered Nurse, or MD.

(3) Air medical services providing advanced life support must have at least one medical attendant who is an EMT-P, PA, RN, or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, Respiratory Therapist, RN, or MD.

(4) Air medical services providing specialized life support must have at least one medical attendant who is a RN or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, RT, RN, or MD.

(5) All Basic, Advanced, and Specialized Life Support Medical Attendants must:

(a) Have a current CPR card or certificate meeting standards approved by the Department.

(b) Have verification in the air medical service file of initial and annual training in altitude physiology, safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications.

(c) Be knowledgeable in the application, operation, care, and removal of all medical equipment used in the care of the patient. The air medical personnel shall have a knowledge of potential in-flight complications, which may arise from the use of the medical equipment and it's in-flight capabilities and limitations.

(d) Have available during transport, a current copy of all written protocols authorized for use by the air medical service medical director. Patient care shall be governed by these authorized written protocols.

(6) Air medical services licensed for specialized life support shall meet the following requirements:

(a) Maintain clinical competency by keeping a current completion card in speciality education programs required by the air medical service job description(e.g., American Heart Association/American Academy of Pediatrics Neonatal Association or Pediatric Advanced Life Support pertinent to appropriate speciality).

(b) Attend continuing education for speciality care providers that is specific and appropriate to the mission statement and scope of care for air medical services.

(c) Annually demonstrate to the air medical service medical director a knowledge and competency of specialized care and treatment of patients.

(7) All air medical services shall have an air medical service medical director who is a physician licensed in the state in which the ground base is located for the air ambulance, knowledgeable and responsible for the air medical care of patients.

(8) The air medical service applicant shall provide in writing to the Department the name of the air medical service medical director. If the air medical service medical director is replaced or removed, the air medical service shall notify the Department within thirty days after the action.

(a) The air medical service medical director:

(i) Shall have initial and annual training in altitude physiology, air ambulance safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications. The air medical service shall document this training and make it available for inspection by the Department.

(ii) Shall have a current completion card in Advanced Cardiac Life Support according to the current standards of the American Heart Association.

(iii) Shall have a current completion card in Advanced Trauma Life Support according to the current standards of the American College of Surgeons.

(iv) Shall have a current speciality education completion card in Neonatal Resuscitation Program, Pediatric Advanced Life Support, and other similar courses or equivalent education in these areas.

(v) Shall have access to all specialty physicians as consultants.

(b) It is the responsibility of the air medical director to:

(i) Authorize written protocols for use by air medical attendants and review policies and procedures of the air medical service.

(ii) Develop and review treatment protocols, assess field performance, and critique at least 10% of the air medical service runs.

R426-2-[5]4. Air Ambulance Vehicle Requirements.

(1) An air ambulance must have a permit from the Department to operate in Utah. Each air ambulance shall carry a decal showing the permit expiration date and permit number issued by the Department as evidence of compliance with R426-2. The permit

holder shall meet all Federal Aviation Regulations specific to the operation of the air medical service.

(2) All air medical services shall notify the Department whenever the ground base location of a permitted vehicle is permanently changed.

(3) Air ambulances shall be maintained in good mechanical repair and sanitary condition on premises, properly equipped, maintained , and operated to provide quality service.

(4) Air ambulance requirements are as follows:

(a) The air ambulance must have sufficient space to accommodate at least one patient on a stretcher.

(b) The air ambulance must have sufficient space to accommodate at least two medical attendant seats.

(c) The patient stretcher shall be FAA-approved. It must be installed using the FAA 337 form or a "Supplemental Type Certificate." The stretcher shall be of sufficient length and width to support a patient in full supine position who is ranked as a 95th percentile American male that is 6 feet tall and weighing 212 pounds. The head of the stretcher shall be capable of being elevated at least 30 degrees.

(d) The air ambulance doors shall be large enough to allow a stretcher to be loaded without rotating it more than 30 degrees about the longitudinal roll axis, or 45 degrees about the lateral pitch axis.

(e) The stretcher shall be positioned so as to allow the medical attendants a clear view and access to any part of the patient's body that may require medical attention. Seat-belted medical attendants must have access to the patient's head and upper body.

(f) The patient, stretcher, attendants, seats, and equipment shall be so arranged as to not block the pilot, medical attendants, or patients from easily exiting the air ambulance.

(g) The air ambulance shall have FAA- approved two point safety belts and security restraints adequate to stabilize and secure any patient, patient stretcher, medical attendants, pilots, or other individuals.

(h) The air ambulance shall have a temperature and ventilation system for the patient treatment area.

(i) The patient area shall have overhead or dome lighting of at least 40-foot candle at the patient level, to allow adequate patient care. During night operations the pilot's cockpit shall be protected from light originating from the patient care area.

(j) The air ambulance shall have a self contained interior lighting system powered by a battery pack or portable light with a battery source.

(k) The pilots, flight controls, power levers, and radios shall be physically protected from any intended or accidental interference by patient, air medical personnel or equipment and supplies.

(l) The patient must be sufficiently isolated from the cockpit to minimize in-flight distractions and interference which would affect flight safety.

(m) The interior surfaces shall be of material easily cleaned, sanitized, and designed for patient safety. Protruding sharp edges and corners shall be padded.

(n) Patients whose medical problems may be adversely affected by changes in altitude may only be transported in a pressurized air ambulance.

(o) The air medical service shall provide all medical attendants with sound ear protectors sufficient to reduce excessive noise pollution arising from the air ambulance during flight.

(p) There shall be sufficient medical oxygen to assure adequate delivery of oxygen necessary to meet the patient medical needs and anticipated in-flight complications. The medical oxygen must:

(i) be installed according to FAA regulation;

(ii) have an oxygen flow rate determined by in-line pressure gauges mounted in the patient care area with each outlet clearly identified and within reach of a seat-belted medical attendant;

(iii) allow the oxygen flow to be stopped at or near the oxygen source from inside the air ambulance;

(iv) have gauges that easily identify the quantity of medical oxygen available;

(v) be capable of delivering fifteen liters/minute at fifty psi;

(vi) have a portable oxygen bottle available for use during patient transfer to and from the air ambulance;

(vii) have a fixed back-up source of medical oxygen in the event of an oxygen system failure;

(viii) the oxygen flow meters shall be recessed, padded, or by other means mounted to prevent injury to patients or medical attendants; and

(ix) "No smoking" signs shall be prominently displayed inside the air ambulance.

(q) The air ambulance electric power must be provided through a power source capable to operate the medical equipment and a back-up source of electric power capable of operating all electrically powered medical equipment for one hour.

(r) The air ambulance must have at least two positive locking devices for intravenous containers padded, recessed, or mounted to prevent injury to air ambulance occupants. The containers shall be within reach of a seat-belted medical attendant.

(s) The air ambulance must be fitted with a metal hard lock container, fastened by hard point restraints to the air ambulance, or must have a locking cargo bay for all controlled substances left in an unattended.

(t) An air ambulance shall have properly maintained survival gear appropriate to the service area and number of occupants.

(u) An air ambulance shall have an equipment configuration that is installed according to FAA criteria and in such a way that the air medical personnel can provide patient care.

(v) The air ambulance shall be configured in such a way that the air medical personnel have access to the patient in order to begin and maintain basic and advanced life support care.

(w) The air ambulance shall have space necessary to allow patient airway maintenance and to provide adequate ventilatory support from the secured, seat-belted position of the medical personnel.

R426-2-[6]5. Equipment Standards.

(1) Air ambulances must maintain minimum quantities of supplies and equipment for each air medical transport as listed in the document R426 Appendix in accordance with the air medical service's licensure level. Due to weight and safety concerns on specialized air transports, the air medical service medical director shall insure that the appropriate equipment is carried according to the needs of the patient to be transported. All medications shall be stored according to manufacturer recommendations.

(2) All medical equipment except disposable items, shall be designed, constructed, and made of materials that under normal

conditions and operations, are durable and capable of withstanding repeated cleaning.

(3) The equipment and medical supplies shall be maintained in working condition and within legal specifications.

(4) All non-disposable equipment shall be cleaned or sanitized after each air medical transport.

(5) Medical equipment shall be stored and readily accessible by air medical personnel.

(6) Before departing, the air medical personnel shall notify the pilot of any add-on equipment for weight and balance considerations.

(7) Physical or chemical restraints must be available and used for combative patients who could possibly hurt themselves or any other person in the air ambulance.

R426-2-[~~7~~]6. Operational Standards.

(1) The pilot may refuse transport to any individual who the pilot considers to be a safety hazard to the air ambulance or any of its passengers.

(2) Records made for each trip on forms or data format specified by the Department, and a copy shall remain at the receiving facility for continuity of care.

(3) The air medical service must maintain a personnel file for personnel which shall include their qualifications and training.

(4) All air medical services must have an operational manual or policy and procedures manual available for all air medical personnel.

(5) All air medical service records shall be available for inspection by representatives of the Department.

(6)(a) All air ambulances shall be equipped to allow air medical service personnel to be able to:

(i) Communicate with hospital emergency medical departments, flight operations centers, air traffic control, emergency medical services, and law enforcement agencies.

(ii) Communicate with other air ambulances while in flight.

(b) The pilot must be able to override any radio or telephonic transmission in the event of an emergency.[

~~8.1 The air ambulance shall be maintained in a clean condition with interior being thoroughly cleaned after each use as appropriate.~~]

(7) The management of the air medical service shall be familiar with the federal regulations related to air medical services.

(8) Each air medical service must have a safety committee, with a designated safety officer. The committee shall meet at least quarterly to review safety issues and submit a written report to the air medical service management and maintain a copy on file at the air medical service office.

(9) All air medical service shall have a quality management team and a program implemented by this team to assess and improve the quality and appropriateness of patient care provided by the air medical service.

R426-2-[~~8~~][7. Statutory penalties.

A person who violates this rule is subject to the provisions of Title 26, Chapter 23, which provides for a penalty of up to $5,000 per violation or a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.

KEY: emergency medical services
[~~1997~~]2001 **26-8**

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Insurance, Administration
R590-175
Basic Health Care Plan Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23369
FILED: 12/01/2000, 13:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the changes to this rule are to comply with newly passed health care mandates.

SUMMARY OF THE RULE OR CHANGE: Attachment is being included in the rule. Basic Health Benefit Plan has been updated to include federal and state mandated requirements. Mandates include Phenylketonuria (PKU) foods, mental health benefits, maternity stay limits, diabetes education requirements, and mastectomy reconstruction benefits. The rule has been updated to increase the annual maximum benefit and to increase prescription copays and to allow existing maternity coverage for conversion policies.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-22-613

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Active health insurers will need to refile basic health plan forms. The cost to insurers is $20 per filing. Currently there are approximately 200 active health insurers in Utah.
❖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: There will be a cost to the carriers for refiling the plans as noted in the Aggregate anticipated cost or savings to State Budget. Due to increased coverages, carriers will often defer costs to the consumer. Costs will differ from company to company. However, these required benefits are already in law. The basic health care plan is a minimum standard for which carriers must use as a model for all other offerings to the individual or small employer group.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be a cost to the carriers for refiling the plans as noted above. Due to increased coverages, carriers will often defer costs to the consumer. Costs will differ from company to company. However, these required benefits are already in law. The basic health care plan is a minimum standard for which carriers must use as a model for all other offerings to the individual or small employer group.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule itself should have no impact on businesses because the rule only brings the basic health benefit plan in compliance with the law.

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 01/18/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 01/11/2001, 9:00 a.m., Room 2112, State Office Building (behind the Capitol), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 01/19/2001

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-175. Basic Health Care Plan Rule.

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R590-175-3. General Requirements.

A. Each insurer who is required to offer a health care plan under the open enrollment provisions of Chapter 30 shall file with the department at least one health plan which is specified by the insurer as complying with the provisions of this rule and which must be offered for sale to anyone qualifying for open enrollment under Chapter 30.

B. The specified plan may offer additional services or provide a greater level of benefits than the Basic Health Care Plan. However, the specified plan must contain at least those benefits set forth in the Basic Health Care Plan.

C. The specified plan shall not be designed or marketed in a manner which may tend to discourage its purchase by anyone purchasing under the open enrollment provisions of Chapter 30.

D. A plan having actuarial equivalence may be considered, at the sole discretion of the commissioner.

E. Each insurer may use its own language to present covered services, limitations and exclusions; however, any plan offered in compliance with the open enrollment provisions of Chapter 30 must contain at least the benefits set forth in the Basic Health Care Plan as adopted by the commissioner. The specified plan is to be offered as a package, in its entirety, and is mutually exclusive of and not comparable on a line by line basis to a carrier's other plans.

F. When the specified plan is offered by a preferred provider organization, PPO, the benefit levels shown in the Basic Health Care Plan are for contracting providers; benefit levels for non-contracting providers' services may be reduced in accordance with Section 31A-22-617.

G. Each insurer is to include its usual contracting provisions in its specified plan including submission of claims, coordination of benefits, eligibility and coverage termination, grievance procedures general terms and conditions, etc.

H. The form to follow for the Basic Health Care Plan [~~may be obtained from the Insurance Department~~]is as follows:[:]

TABLE
BASIC HEALTH CARE PLAN

1. MAXIMUM BENEFIT. The maximum benefit per person for the entire period for which coverage is in effect shall not be less than $1,000,000.

2. ANNUAL MAXIMUM BENEFIT. The maximum annual benefit per person shall not be less than $250,000.

3. PREEXISTING CONDITION LIMITATION. Any preexisting condition limitation shall be in compliance with Utah Code 31A-30-107(5); the waiting period shall be 12 months with credit for prior coverage when applicable.

4. COST-SHARING. Cost-sharing shall be based on eligible expenses. The cost-sharing features of the plan shall be one of the following, at the option of the carrier:

(a)(i) Deductible. An annual deductible may not be greater than $1,000 per person and only two deductibles per family unit. However, when the person has a medical savings account, the deductible amount may be greater than $1,000.

(ii) Copayment. See paragraph 6 for copayment applicable to prescription drugs.

(iii) Coinsurance. For all covered services other than mental illness/substance abuse services, the person shall pay not more than 20% coinsurance to an annual maximum of $3,000 per person, $6,000 per family unit.

(b)(i) Deductible. An annual deductible may not be greater than $1,000 per person and only two deductibles per family unit. However, when the person has a medical savings account, the deductible amount may be greater than $1,000. Preventive services under a managed care plan; e.g., HMO, PPO, are not subject to the deductible.

(ii) Copayment. A copayment is not to exceed $15 per visit for office, including preventive care, services. When a copayment is required, no coinsurance may be charged for the same service. See paragraph 6 for copayment applicable to prescription drugs.

(iii) Coinsurance. For all covered services other than mental illness/substance abuse services, the person shall pay not more than 20% coinsurance to an annual maximum of $3,000 per person, $6,000 per family unit.

(c)(i) Deductible. None.

(ii) Copayment. A copayment is not to exceed $20 per visit for office, including preventive care, services. When a copayment is required, no coinsurance may be charged for the same service. See paragraph 6 for copayment applicable to prescription drugs.

(iii) Coinsurance. For all covered services other than mental illness/substance abuse services, the person shall pay not more than 30% coinsurance to an annual maximum of $3,000 per person, $6,000 per family unit.

5. PREVENTIVE SERVICES. Preventive services covered under a managed care plan shall not be subject to the annual deductible. Preventive services under an indemnity or fee-for-service plan may be subject to the annual deductible. Covered preventive services shall consist of at least the following:

(a) childhood immunizations as recommended by the Centers for Disease Control;

(b) well-baby care through age five in accordance with guidelines recommended by the American Academy of Pediatrics;

(c) for adults and adolescents, age, sex and risk appropriate preventive and screening services in accordance with guidelines recommended by the U.S. Preventive Services Task Force.

6. PRESCRIPTION DRUGS. Benefits for prescription drugs shall be subject to either:

(a) a copayment of not more than $15 for generic, $25 for brand-name formulary prescription drugs, and $35 for non-formulary prescription drugs; or

(b) at the option of the carrier, benefits may be subject to a 30% maximum coinsurance.

Carriers may use formularies.

7. OUTPATIENT REHABILITATION SERVICES. Benefits for outpatient rehabilitation services (e.g., physical therapy, occupational therapy, and speech therapy) shall be limited to not less than 10 visits for each illness or injury.

8. MENTAL ILLNESS AND/OR SUBSTANCE ABUSE SERVICES. Benefits for mental illness and/or substance abuse services may be subject to a deductible. Coinsurance may not exceed 50% of eligible expenses and may not apply toward the maximum. Benefits shall be one of the following, at the option of the carrier:

(a) benefits for inpatient services shall be limited to not less than ten days annually per person; benefits for outpatient services shall be limited to not less than 20 visits annually per person;

(b) mental health and/or substance abuse services for group policies will be subject to 31A-22-625 and 31A-22-720.

9. HOME HEALTH CARE. Benefits for home health care shall be limited to not less than 30 days in any 12 month period and shall consist of services provided, in accordance with a plan of care, in the home by a licensed community home health agency or an approved hospital program for home health care when the person is physically unable to obtain necessary medical care on an outpatient basis, would otherwise be confined as an inpatient, and is under the care of a physician. A "plan of care" means a written plan that:

(a) is approved by the physician prior to commencement of treatment;

(b) is based on the assessment data or physician orders; and

(c) identifies the patient's needs, who will provide needed services, how often, treatment goals, and anticipated outcomes.

Covered services shall not include health aide services furnished when the person is not receiving professional services of a registered nurse (RN), licensed practical nurse (LPN), or licensed vocational nurse (LVN), nor shall it include housekeeping services.

10. DURABLE MEDICAL EQUIPMENT. Benefits for durable medical equipment, rental or purchase, at the option of the carrier. Prosthetics and orthotics shall be limited to not less than $5,000 per person for the entire period for which coverage is in effect.

11. COVERED SERVICES. Subject to medical necessity, provider network, and prior approval criteria established by the carrier, and subject to the limitations and exclusions and other terms and conditions of the policy, the following shall be covered services under the basic health care plan:

(a) inpatient hospital services:

(i) semi-private room accommodations;

(ii) ICU;

(iii) hospital services and supplies;

(b) ambulatory service facility services:

(i) birthing center services, when maternity care is covered;

(ii) surgical facility services;

(c) office preventive services;

(d) office medical services:

(i) diagnostic services; e.g., x-ray, lab tests;

(ii) therapeutic services; e.g., injection of medication;

(e) outpatient hospital services:

(i) emergency room services;

(ii) diagnostic services;

(iii) therapeutic services; e.g., chemotherapy, radiation therapy;

(iv) surgical facility services;

(f) inpatient medical services; e.g., physician visits;

(g) surgery;

(h) assistant-at-surgery;

(i) anesthesia, including children's general anesthesia for dental, if necessary;

(j) consultation;

(k) dental care for accidental injury to sound natural teeth;

(l) limited home health care;

(m) emergency ambulance transportation;

(n) prescription drugs;

(o) durable medical equipment, prosthetics and orthotics, as limited; and medical supplies;

(p) maternity services:

(i) for employer groups maternity benefits are provided on the same basis as benefits for sickness;

(ii) for individuals there are no maternity benefits;

(iii) benefits for complications of pregnancy are provided on the same basis as benefits for sickness. Complications of pregnancy will not be excluded solely because the pregnancy is a preexisting condition. "Complications of pregnancy" means an illness, distinct from pregnancy, affecting the mother and occurring during pregnancy and requiring separate and specific medical or surgical services for which separate and additional charges are incurred. In no event will the presence of complications of pregnancy result in benefits being provided for services normal to care and treatment of pregnancy and childbirth. Such normal services include but are not limited to hospitalization for childbirth or termination of pregnancy by any means, anesthesia services, ultrasound examinations, prenatal diagnostic laboratory services, antepartum and postpartum care, vaginal or cesarean delivery, threatened premature termination, premature termination, and routine nursery care of the newborn;

(iv) newborn and maternity inpatient time limits will conform to 31A-22-610.2. For conversion plans, maternity will be covered with the lesser of benefits originally on plan prior to conversion or the basic benefit plan. This coverage benefit is only for existing pregnancies, known or unknown at the time of conversion. Additional premium for pregnancy is not allowed;

(q) limited outpatient rehabilitation services;

(r) limited mental illness/substance abuse services;

(s) diabetes as required by 31A-22-626.

(t) inborn metabolic errors, PKU, nutritional benefits as required by 31A-22-623; and

(u) mastectomy as required by 31A-22-630 and 31A-22-719.

12. EXCLUSIONS. Benefits will not be provided for any of the following:

(a) services, supplies, or treatment provided prior to the effective date or after the termination date of coverage;

(b) charges in connection with a work-related injury or sickness for which coverage is provided under any state or federal worker's compensation, employer's liability, or occupational disease law;

(c) services, supplies, or treatment for which coverage is provided under any motor vehicle no-fault plan. When the person is required by law to have no-fault insurance in effect, this exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect.;

(d) services, supplies, or treatment for injury or sickness resulting from war or any act of war whether declared or undeclared;

(e) services, supplies, or treatment for injury or sickness resulting from service in the military of any country;

(f) services, supplies, or treatment for which benefits are provided under Medicare or any other government program except Medicaid;

(g) services, supplies, or treatment for which no charge is made or for which the person is not required to pay;

(h) services or supplies not incident to or necessary for the treatment of injury or sickness or which are not medically necessary, as determined by the carrier;

(i) treatment or prevention of an injury or sickness, including mental illness, by means of treatments, procedures, techniques, or therapy outside generally accepted health care practice;

(j) services, supplies, or treatment required as a result of an injury or sickness sustained while committing a felony or engaging in an illegal occupation;

(k) services to the extent benefits are provided by any governmental unit except as required by federal law for treatment of veterans in Veterans Administration or armed forces facilities for non-service related medical conditions;

(l) examinations, reports, or appearances in connection with legal proceedings; and services, supplies, or accommodations pursuant to a court order, whether or not injury or sickness is involved;

(m) investigative/experimental technology, treatment, procedure, facility, equipment, drug, device or supply, "technology," which does not, as determined by the carrier on a case by case basis, meet all of the following criteria:

(i) the technology must have final approval from appropriate governmental regulatory bodies, if applicable;

(ii) the technology must be available in significant number outside the clinical trial or research setting;

(iii) the available research regarding the technology must be substantial. For purposes of this definition, "substantial" means sufficient to allow the carrier to conclude that:

(A) the technology is both medically necessary and appropriate for the person's treatment;

(B) the technology is safe and efficacious; and

(C) more likely than not, the technology will be beneficial to the person's health;

(iv) the regional medical community as a whole must generally recognize the technology as appropriate;

(n) services in connection with any transplant of any whole organ or part thereof, live or cadaver, bone marrow, either as donor or recipient, or any artificial organ, except for the following:

(i) cornea transplants;

(ii) kidney transplants;

(iii) liver transplants for children under age 18 years;

(iv) bone marrow transplants for children under age 18 years; and

(v) evaluation, treatment and therapy involving the use of myeloablative chemotherapy with autologous hematopoietic stem cell and/or colony stimulating factor support for children under age 18 years;

(o) custodial care. "Custodial care" means:

(i) institutional care, consisting mainly of room and board, which is for the primary purpose of controlling the person's environment; and

(ii) professional or personal care, consisting mainly of non-skilled nursing services with or without medical supervision, which is for the primary purpose of managing the person's disability or maintaining the person's degree of recovery already attained without reasonable expectation of significant further recovery.

"Custodial care" does not mean outpatient palliative and supportive care provided by a hospice program to a person who is terminally ill with a life expectancy of not more than six months and is in lieu of institutional or inpatient hospital care;

(p) services, supplies, or treatment in connection with cosmetic or reconstructive procedures which alter appearance but do not restore or improve impaired physical function or which are performed for psychological or emotional purposes, except when performed while a person is covered under this policy for the following:

(i) repair of defects resulting from an accident occurring within 90 days of the effective date of this policy under creditable coverage or occurring during this policy;

(ii) replacement of diseased tissue surgically removed for illness occurring within 90 days of this policy under creditable coverage or occurring during this policy;

(iii) treatment of a birth defect in a child who has met the pre-existing conditions requirement since birth or date of placement for adoption; and

(iv) mastectomy reconstruction as required by 31A-22-630 and 31A-22-719;

(q) dental services. This exclusion will not apply if dental services are required as a result of an accidental injury which occurs while coverage is in force, dental services are received within two years following the accidental injury, and the person has been continuously covered from the date of the accidental injury through the date the dental services are provided;

(r) eyeglasses, contact lenses and/or servicing of eyeglasses and/or contact lenses. This exclusion does not apply to contact lenses in the case of keratoconus or post-cataract surgery when the contact lenses are medically necessary in the treatment of the condition;

(s) medical, non-surgical, care of weak, strained, flat, unstable or unbalanced feet routine foot care. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(t) orthopedic or corrective shoes, foot orthotics, or any other supportive devices for the feet;

(u) drugs and medicines which do not bear the legend "Caution - federal law prohibits dispensing without a prescription" and/or which are not dispensed by a licensed pharmacist;

(v) charges in connection with jaw realignment procedures including, but not limited to, osteotomy, upper or lower jaw augmentation or reduction procedures, and orthognathic surgery; charges in connection with treatment of temporomandibular joint (TMJ) dysfunction, including surgical procedures and injections of the TMJ, physical therapy, splints, and orthodontic appliances. This exclusion will not apply to:

(i) the initial diagnostic evaluation of TMJ dysfunction;

(ii) surgical correction of the TMJ required as a result of an accidental injury which occurs while this coverage is in force; and

(iii) physical therapy services related to and subsequent to covered TMJ surgery;

(w) treatment of obesity by means of surgical, medical or medication services and regardless of associated medical, emotional, or psychological conditions;

(x) services or supplies in connection with genetic studies;

(y) reversal of a sterilization procedure;

(z) any treatment for or diagnosis of infertility, artificial insemination, in vitro fertilization, and any other male or female dysfunction;

(aa) vision testing, vision training;

(bb) radial keratotomy, laser and any surgical correction of errors of refraction;

(cc) educational service or counseling, including weight control clinics, stop smoking clinics, cholesterol counseling, exercise programs or other types of physical fitness training, except for those benefits required by 31A-22-626;

(dd) marriage counseling; family counseling; counseling for educational, social, occupational, religious, or other similar maladjustment; behavior modification, biofeedback, or rest cures as treatment for mental disorders; sensitivity or stress-management training; self-help training; and residential treatment;

(ee) treatment for mental disorders which are irreversible or for which there is little or no reasonable expectation for improvement, including mental retardation, personality disorders, and chronic organic brain disease. This exclusion does not apply to the initial assessment for diagnosis of the condition;

(ff) psychotherapy, counseling, or other services in connection with learning disabilities, disruptive behavior disorders, conduct disorders, psychosexual disorders, or transexualism. This exclusion does not apply to the initial assessment for diagnosis of the condition;

(gg) vitamins, special formulas, special diets, and food supplements except as provided by a hospital or skilled nursing facility during a confinement for which benefits are available, except as outlined in 31A-22-623;

(hh) any devices used to aid hearing, including cochlear implants, the fitting of such devices and any routine hearing tests;

(ii) acupuncture or acupressure;

(jj) speech therapy for psychosocial speech delays;

(kk) all shipping, handling, or postage charges except as incidentally provided, without a separate charge, in connection with covered services or supplies;

(ll) interest or finance charges except as specifically required by law;

(mm) charges for missed appointments, telephone consultations, and clerical services for completion of special reports or claim forms;

(nn) travel expenses, whether or not prescribed;

(oo) care, except urgent or emergency care, rendered outside the United States;

(pp) services provided by a member of the person's immediate family or household; and

(qq) autopsy procedures;

I. The specified plan is to be filed with the department before use.

J. Conversion coverage provided pursuant to Section 31A-22-708, may provide additional benefits in addition to the Basic Health Care Plan.

. . . . . .

KEY: insurance
[~~March 11, 1999~~]2001 **31A-22-613.5**

Natural Resources, Wildlife Resources
R657-5
Taking Big Game

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23356
FILED: 11/30/2000, 18:27
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted annually for taking public input and reviewing the division's bucks, bulls and once-in-a-lifetime big game species program.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended to combine the premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime drawing, and the general deer and general muzzleloader elk drawing. This amendment adds the Internet as a source to obtain bucks, bulls and once-in-a-lifetime big game applications for applying in the big game drawing and applying for permits online. This amendment also eliminates the Wildlife Habitat Authorization, pursuant to S.B. 248, 2000 Legislative Session. Section R657-5-12 is being amended to eliminate the required six-inch barrel length on handguns. Section R657-5-15 is being amended to clarify allowed crossbow equipment for disabled persons. Section R657-5-41 is being amended to allow a statewide archery permit for general archery deer hunting. Provisions under the general buck deer hunts are being amended to allow a person 18 years of age or younger to hunt statewide archery if obtaining an archery permit; and all three general deer seasons provided the person obtains a general muzzleloader or general season (rifle) permit. Other changes are being made for consistency and clarity.
(DAR Note: S.B. 248 is found at 200 Utah Laws 195, and will be effective January 1, 2001.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: This amendment clarifies the procedures and requirements for obtaining bucks, bulls and once-in-a-lifetime big game permits, methods of take, and other administrative details. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget.
❖LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
❖OTHER PERSONS: The amendments provide procedures and requirements for obtaining bucks, bulls and once-in-a-lifetime big game permits, methods of take, and other administrative details, therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.
COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments are for clarification and providing requirements and procedures for obtaining bucks, bulls and once-in-a-lifetime big game permits, methods of take, and other administrative details. The Division of Wildlife Resources (DWR) determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or by Internet E-mail at nrdwr.dsundell@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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: John Kimball, Director

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.

. . . . . .

R657-5-3. [~~Wildlife Habitat Authorization, ~~]License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

R657-5-4. Age Requirements and Restrictions.

(1)(a) A person 14 years of age or older may purchase a [~~wildlife habitat authorization, and ~~]permit and tag to hunt big game. A person 13 years of age may purchase a[~~ wildlife habitat authorization, and~~] permit and tag to hunt big game if that person's 14th birthday falls within the calendar year for which the [~~wildlife habitat authorization, ~~]permit and tag are issued.[

~~(b) A person must purchase a wildlife habitat authorization prior to obtaining a permit and tag to hunt big game.~~]

(2)(a) A person at least 14 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License[~~, Wildlife Habitat Authorization~~] and Permit.

(1) Whenever any unexpired license,[~~ wildlife habitat authorization,~~] permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original license,[~~ wildlife habitat authorization~~] or permit, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or Certificate of Registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Companion Hunting.

(1) A person may take a deer or elk for a person who is legally blind or quadriplegic provided the blind or quadriplegic person:

(a) meets hunter education requirements as provided in Section 23-19-11 and Rule R657-23;

(b) purchases [~~a wildlife habitat authorization and ~~]the appropriate permit and tag;

(c) obtains a certificate of registration from the division; and

(d) is accompanied by a companion hunter who has[~~ obtained a wildlife habitat authorization and has~~] completed a division approved hunter education course as provided in Section 23-19-11 and Rule R657-23.

(2) A person who is legally blind may obtain a certificate of registration from the division by submitting a signed statement by a licensed ophthalmologist, optometrist, or physician verifying that the applicant:

(a) has no more than 20/200 visual acuity in the better eye when corrected; or

(b) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of vision 20 degrees or less.

(3) A person who is quadriplegic may obtain a certificate of registration from the division by submitting a signed statement by a licensed physician verifying that the applicant is quadriplegic.

(4) The blind or quadriplegic person must be accompanied by the companion hunter at the time of kill and while transporting the deer or elk.

R657-5-7. Special Season Extension for Disabled Persons.

(1) A certificate of registration may be obtained from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is quadriplegic or permanently confined to a wheelchair;

(b) meets hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains [~~a wildlife habitat authorization and ~~]the appropriate permit and tag.

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R657-5-12. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet[~~, has a barrel length of 6 inches or longer,~~] and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet[~~, has a barrel length of 6 inches or longer,~~] and develops 500 foot-pounds of energy at 100 yards.

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R657-5-15. Crossbows.

(1)(a) A disabled person who has a permanent, physical disability may use a crossbow to hunt deer, elk or pronghorn during the respective archery hunt dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, provided that person:

(i) applies for and obtains a certificate of registration authorizing the use of a crossbow; and

(ii) provides a physician's statement confirming the disability as defined in Subsection (b).

(b) "Disabled person" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment.

(2)(a) Any crossbow used to hunt deer, elk or pronghorn must have:

(i) a stock that is at least 18 inches long;

(ii) a minimum draw weight of 125 pounds;

(iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and

(iv) a positive safety mechanism.

(b) Arrows or bolts used must be at least 18 inches long and must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring.

(3) The following equipment or devices may not be used to take big game:

(a) arrows with chemically treated or explosive arrowheads; or

(b) a bow with an attached electronic range finding device or a magnifying aiming device.

(4) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

[~~(4)~~](5) A cocked crossbow may not be carried in or on a vehicle.

R657-5-16. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game may not be authorized to hunt on [~~Indian reservation and~~]tribal trust lands. Hunters must observe tribal regulations concerning wildlife while hunting on [~~Indian reservation and~~]tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not:

(a) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building;[~~or~~]

(b) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house, or other building regularly occupied by people; or

(c) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader in Salt Lake County, south of I-80 and east of I-15.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

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R657-5-20. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes [~~worth~~]totaling more than $500.

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R657-5-26. Poaching-Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt [~~in the following year~~]for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(3)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(4)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(5) Any person who receives a poaching-reported reward permit must be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-5-27. [~~Bucks, Bulls,~~]Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and Application [~~- Deadlines, and~~]Process for General Buck Deer and General Muzzleloader Elk [~~Application - Deadlines~~]Permits.

(1)(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(2) Applications are available from license agents[~~, and~~], division offices, and through the division's Internet address.

(3) A resident may apply in the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry and cooperative wildlife management unit; or

(iii) special limited entry archery elk; or

(iv) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-66(2)(b).

(4) A nonresident may apply in the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry and limited entry; or

(ii) bull elk - limited entry; or

(iii) special limited entry archery elk; or

(iv) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit.

(5) A resident or nonresident may apply in the [~~general buck deer and general muzzleloader elk~~]big game drawing for:

(a) a general buck deer permit [~~by region -~~]- statewide general archery, or by region for general season[~~,~~] or general muzzleloader; and

(b) a general muzzleloader elk permit.

(6)[~~(a)~~] A person may not submit more than one application per species as provided in Subsections (3) and (4) [~~in the bucks, bulls and once-in-a-lifetime drawing.~~], and Subsection (5) in the big game drawing.

[~~(b) In the general buck deer and general muzzleloader drawing, a person may not:~~

~~(i) submit more than one application per species as provided in Subsection (5);~~

~~(ii) apply for a general buck deer permit if that person has obtained a buck deer permit for the current year; or~~

~~(iii) apply for a general muzzleloader elk permit if that person has obtained a bull elk permit for the current year.~~

~~(7)(a) A wildlife habitat authorization may be purchased before applying, or the wildlife habitat authorization will be issued to the applicant upon successfully drawing a permit.~~

~~(b) The wildlife habitat authorization number or fee must be submitted with the application.~~

~~(8)(a)~~](7)(a) Applications must be mailed by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

[~~(9)(a) Late applications~~](8)(a) Late applications, received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed, for the purpose of entering data into the division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The $5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(9)[~~(10)~~] Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

[~~(11)~~](10) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-30(4) and R657-5-32(1).

(12) To apply for a resident permit, a person must establish residency at the time of purchase.

(13) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-28. Fees for [~~Bucks, Bulls~~]Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime[~~, and~~] Permits, and for General Buck Deer and General Muzzleloader Elk [~~Applications.~~]Permits.

[~~(1) Each bucks, bulls~~](1) Each premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime application must include:

(a) the highest permit fee of any permits applied for;

(b) a $5 nonrefundable handling fee for one of the following permits:

(i) buck deer;

(ii) bull elk; or

(iii) buck pronghorn; and

(c) a $5 nonrefundable handling fee for a once-in-a-lifetime permit; and

(d)[~~- the wildlife habitat authorization fee, if it has not yet been purchased; or~~

~~(c)~~] the $5 nonrefundable handling fee, if applying only for a bonus point.

(2) Each general buck deer and general muzzleloader elk application must include:

(a) the permit fee, which includes the $5 nonrefundable handling fee for each species applied for; [~~and~~]or

[~~(b) the wildlife habitat authorization fee, if it has not yet been purchased; or~~

~~(c)~~](b) the $5 nonrefundable handling fee per species, if applying only for a preference point.[

~~(3)(a) Personal checks, money orders, cashier's checks and credit cards are accepted.~~

~~(b) Personal checks drawn on an out-of-state account are not accepted.~~

~~(4)(a) Credit cards must be valid at least 30 days after the drawing results are posted.~~

~~(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.~~

~~(c) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.~~

~~(5)(a) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.~~

~~(b) The division shall charge a returned check collection fee for any check returned unpaid.~~

~~(6) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit card is invalid or refused.~~

~~(7) Any fee errors must be corrected with a money order or cashier's check through the application correction process.~~]

R657-5-29. Applying as a Group for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime Permits, and for General Buck Deer and General Muzzleloader Elk Permits.

(1)(a) Up to four people may apply together for premium limited entry, limited entry, and resident cooperative wildlife management unit deer, elk or pronghorn permits in the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing and in the antlerless drawing.

(b) Up to four people may apply together for general elk [~~permit in the general buck deer and general muzzleloader elk~~]permits in the big game drawing.

(c) Up to ten people may apply together for general deer permits in the [~~general buck deer and general muzzleloader elk~~]big game drawing.

(2) Applicants must indicate the number of hunters in the group by filling in the appropriate box on each application form.

(3) Group applicants must submit their applications together in the same envelope.

(4) Residents and nonresidents may apply together.

(5)(a) Group applications shall be processed as one single application.

(b) Any bonus points used for a group application, shall be averaged and rounded down.

(6) When applying as a group:

(a) if the group is successful in the drawing, then all applicants with valid applications in that group shall receive a permit;

(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;

(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw order; or

(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.

(i) The applicant whose application is on the top of all the applications for that group, will be designated the group leader.

(ii) If any group member has an error on their application that is not corrected during the correction process, the reject box on the group leader's application will determine whether the entire group is rejected.

R657-5-30. [~~Bucks, Bulls~~]Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime[~~,~~] and General Buck Deer and General Muzzleloader Elk Drawings.

(1)(a) [~~Bucks, bulls, and once-in-a-lifetime~~]Big game drawing results [~~are~~]may be posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) [~~General buck deer and general muzzleloader elk drawing results shall only be posted on the division's Internet address.~~]Applicants shall be notified by mail of draw results by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits for the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing shall be drawn in the following order:

(a) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(b) limited entry, special limited entry and cooperative wildlife management unit bull elk;

(c) limited entry and cooperative wildlife management unit buck pronghorn;[~~and~~]

(d) once-in-a-lifetime[~~.~~];

[~~(3) Permits for the general buck deer and general muzzleloader elk drawing shall be drawn in the following order:~~

~~(a)~~](e) general buck deer; and

[~~(b)~~](f) general muzzleloader elk.

[~~(4)~~](3) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or cooperative wildlife management unit buck deer;

(b) a limited entry, special limited entry, or cooperative wildlife management unit bull elk; or

(c) a limited entry or cooperative wildlife management unit buck pronghorn.

(4) If any permits [~~remain after the bucks bulls or once-in-a-lifetime drawing and any general muzzleloader elk permits remain after the general buck deer and general muzzleloader elk drawing,~~]listed in Subsection (2)(a) through (2)(d) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done

allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-31. [~~Bucks, Bulls~~]Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit and Once-In-A-Lifetime, and General Buck Deer and General Muzzleloader Elk Application Refunds.

(1)(a) Unsuccessful applicants who applied in the initial [~~bucks, bulls and once-in-a-lifetime~~]big game drawing and who applied with a check or money order will receive a refund in May.

(b) Unsuccessful applicants, who applied for remaining permits in the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing and who applied with a check or money order, will receive a refund in July.[~~June.~~

~~(c) Unsuccessful applicants, who applied in the general buck deer and general bull elk drawing and who applied with a check or money order, will receive a refund in August.~~]

(2)(a) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for.

(c) If group members have other financial arrangements between themselves, group members should be prepared to reallocate each group member's individual refunds among themselves.

(3) The handling fees are nonrefundable.

R657-5-32. Permits Remaining After the[~~ Bucks, Bulls and Once-In-A-Lifetime, and General Buck Deer and General Muzzleloader Elk~~] Drawing.

(1) Permits remaining after the [~~bucks, bulls, and once-in-a-lifetime, and general buck deer and general muzzleloader elk~~]big game drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents, except[~~ general deer permits, and~~] nonresidents may not purchase resident cooperative wildlife management unit permits.

(2) Applications are available from division offices, through the division's Internet address, and license agents.

(3) The same application form used for [~~the bucks, bulls~~]premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime [~~big game or~~]permits, and for general buck deer and general muzzleloader elk permits in the big game drawing must be used when applying for remaining permits by mail. The handling fees are nonrefundable.

R657-5-33. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing process during the preceding two years may not apply in the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing process, may not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to:

(a) general archery, general season, general muzzleloader, antlerless deer, conservation, sportsman and poaching-reported reward deer permits; or

(b) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

R657-5-34. Waiting Periods for Elk.

(1) A person who obtained a limited entry or cooperative wildlife management unit bull elk permit through the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing process during the preceding four years may not apply in the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing for any of these permits during the current year.

(2) A person who obtains a limited entry or cooperative wildlife management unit bull elk permit through the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) general archery, general season, general muzzleloader, special limited entry archery, antlerless elk, cooperative wildlife management unit spike bull elk, conservation, sportsman and poaching-reported reward elk permits; or

(b) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

R657-5-35. Waiting Periods for Pronghorn.

(1) A person who obtained a buck pronghorn permit through the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing process in the preceding four years, may not apply in the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) doe pronghorn, pronghorn conservation, sportsman and poaching-reported reward permits; or

(b) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

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R657-5-37. Waiting Periods for Once-In-A-Lifetime Species.

(1) Any person who has obtained a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep, or Rocky Mountain goat may not apply for a once-in-a-lifetime permit for the same species in the [~~Bucks, Bulls and Once-In-A-Lifetime~~]big game drawing or sportsman permit drawing.

(2) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

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R657-5-39. Cooperative Wildlife Management Unit Permits and Landowner Permits.

(1)(a) A waiting period or once-in-a-lifetime status does not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (b).

(b) Waiting periods are incurred for the purpose of applying in the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-5-40. Bonus Point System and Preference Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for permits in the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing; or

(ii) each valid application when applying for bonus points in the [~~bucks, bulls and once-in-a-lifetime~~]big game drawing.

(b) Bonus points are awarded by species.

(c) Bonus points are awarded for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) limited entry and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn; and

(iv) all once-in-a-lifetime species.

(d) Bonus points shall not be awarded for special limited entry archery bull elk or cooperative wildlife management unit spike bull elk.

(3) A person may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and Cooperative Wildlife Management unit;

(ii) bull elk - limited entry and Cooperative Wildlife Management unit; or

(iii) buck pronghorn - limited entry and Cooperative Wildlife Management unit; and

(b) only one once-in-a-lifetime, including once-in-a-lifetime Cooperative Wildlife Management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(d) A person may only apply for bonus points [~~on~~]in the initial [~~Bucks, Bulls and Once-In-A-Lifetime~~]big game drawing.

(e) Group applications will not be accepted when applying for bonus points.

(5)(a) Fifty percent of the permits for each hunt unit and species will be reserved for applicants with bonus.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the [~~general~~]initial drawing.

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner;

(c) a person obtains a poaching-reported reward permit; or

(d) a person obtains a special limited entry archery elk permit.

(9) Bonus points are not transferable.

(10) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(11) Bonus points are tracked using social security numbers or division-issued hunter identification numbers.

(12) Preference points are used in the big game drawing for general buck deer and general muzzleloader elk [~~drawing~~]permits to ensure that applicants who are unsuccessful in the drawing for general buck deer permits and general muzzleloader elk permits, will have first preference in the next year's drawing for the respective species.

(13) A preference point is awarded for:

(a) each valid unsuccessful application when applying for:

(i) a general buck deer permit;

(ii) a general muzzleloader elk permit; or

(iii) each valid application when applying only for preference points in the initial drawing.

(b) Preference points are awarded by species.

(14)(a) A person may not apply in the drawing for both a general buck deer preference point and a general buck deer permit.

(b) A person may not apply in the drawing for both a general muzzleloader elk preference point and a general muzzleloader elk permit.

(c) A person may not apply for a preference point if that person is ineligible to apply for a permit for the respective species.

(d) Preference points shall not be used when applying for or obtaining remaining permits after the initial drawing.

(15) Preference points are forfeited if:

(a) a person obtains a general buck deer permit through the drawing; or

(b) a person obtains a general muzzleloader elk permit through the drawing.

(16)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the [~~General Buck Deer and General Muzzleloader Elk~~]initial drawing.

(17) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(18) Preference points are tracked using social security numbers or division-issued hunter identification numbers.

R657-5-41. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit may use archery equipment to take:

(a) one buck deer statewide within [~~the~~]a general hunt area[~~specified on the permit~~], except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(c) a deer of hunter's choice within the Uintah Basin extended archery area.

(3) A person who obtains a general archery buck deer permit[~~for any hunt area~~], or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front and Uintah Basin extended archery areas.

(4) A person who has obtained a[~~Northern Region~~] general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may take a deer of hunter's choice within the Northern Region general hunt area.

(5) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.[~~:~~]

[~~(a) antlerless deer; and~~

~~(b) any~~](6)(a) Any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the statewide general archery, or by region the general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-10 through R657-5-15, respectively, for each respective season, provided that person obtains a general season or general muzzleloader deer permit for a specified region.

[~~(6)~~](b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

(7) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-42. General Season Buck Deer Hunt.

(1) The dates for the general season buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general season buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general season buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-10 through R657-5-15, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

R657-5-43. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit, except premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general season and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-10 through R657-5-15, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season.

(4) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

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R657-5-47. General Season Bull Elk Hunt.

(1) The dates for the general season bull elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:

(a) Salt Lake County south of I-80 and east of I-15;

(b) elk cooperative wildlife management units; and

(c) the San Juan unit east of US-191.

(2)(a) General season elk hunters may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull or any bull elk as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(3).

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R657-5-49. Limited Entry Bull Elk Hunt and Special Limited Entry Archery Bull Elk Hunt.

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry elk permit.

(2) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3) A person who has obtained a limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-50(3).

(4)(a) A hunter who obtains a limited entry bull elk permit for one of the hunt units listed in Subsection (b), may also purchase [~~a~~]an auxiliary permit to hunt within the area specified on the permit using archery equipment during the established general archery elk season, [~~except in the following units:~~

~~(i) Beaver;~~

~~(ii) Box Elder, Pilot Mountain;~~

~~(iii) Cache, North;~~

~~(iv) Fillmore, Oak Creek;~~

~~(v) Fillmore, Pahvant;~~

~~(vi)~~]or using muzzleloader equipment during the established general muzzleloader deer season.

(b)(i) Book Cliffs, Little Creek;

(ii) Book Cliffs, Bitter Creek-South;

(iii) Box Elder, Grouse Creek;

(iv) Cache, Meadowville;

(v) Cache, North;

(vi) Cache, South;

(vii) LaSal, LaSal Mountains;

[~~(vii) Monroe;~~

~~(viii) Mt. Dutton;~~

~~(ix) Panguitch Lake;~~

~~(x) Paunsaugunt;~~

~~(xi) Plateau, Boulder;~~

~~(xii) Plateau, Fishlake-Thousand Lake;~~

~~(xiii) San Juan;~~

~~(xiv) San Rafael, South; and~~

~~(xv) Southwest Desert.~~

~~(b)~~](viii) Manti, Manti;

(ix) Manti, Nebo;

(x) Nine-Mile, Anthro;

(xi) Oquirrh-Stansbury, North;

(xii) Oquirrh-Stansbury, South Oquirrh;

(xiii) South Slope, Diamond Mountain;

(xiv) Wasatch Mountain;

(xv) West Desert, Deep Creek.

(c) If an elk is not taken during this period, any legal weapon may be used during the dates specified on the limited entry bull elk permit.

(5) To hunt in a special limited entry archery elk area, a hunter must obtain a special limited entry archery elk permit.

(6)(a) A special limited entry archery bull elk permit allows a person, using archery equipment, to take one hunter's choice elk, during the season specified on the permit and within the following units:

(i) Beaver;

(ii) Cache, North;

(iii) Chalk Creek;

(iv) East Canyon;

(v) Kamas;

(vi) LaSal, LaSal Mountains;

(vii) Morgan-South Rich;

(viii) Mt. Dutton;

(ix) Nine-Mile, Range Creek;

(x) North Slope, Summit-West Daggett;

(xi) North Slope, Three Corners;

(xii) Ogden;

(xiii) Paunsaugunt;

(xiv) Plateau, Boulder;

(xv) San Rafael, North;

(xvi) San Rafael, South;

(xvii) South Slope, Yellowstone-Vernal; and

(xviii) Zion.

(b) A person may not hunt in any elk Cooperative Wildlife Management unit located within the units as provided in Subsection (6)(a). Spike bull elk restrictions do not apply to special limited entry archery elk permittees.

(7) A person who has obtained a special limited entry archery bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(3).

(8) Bonus points shall not be awarded or utilized when applying for, or in obtaining, special limited entry archery elk permits.

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R657-5-55. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison within the area and season as specified on the permit.

(4)(a) [~~A mandatory wildlife orientation course for the Antelope Island Hunt is held on Antelope Island Park Headquarters.~~]An orientation course is required for bison hunters who draw a an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation. Hunt fees include the handling fee, permit, and transportation on the island. Permittees are required to use these contract services. Permittees are required to furnish their own living quarters and food during their stay.

(c) Individuals accompanying the permittee must pay an additional fee and provide their own reliable four-wheel drive vehicle. Prior arrangements need to be made through the Division of Parks and Recreation.

(5) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

R657-5-56. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters [~~must~~]are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

R657-5-57. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) Any goat may be legally taken, however, permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters [~~must~~]are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.[

~~(6) Successful hunters must report the harvest to a division office within 72 hours of leaving the hunting area.~~]

R657-5-58. Depredation Hunter Pool Permits.

(1) When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters are called from a list of unsuccessful permittees or other resident hunters who have applied for depredation hunts.

(3)(a) Application does not affect eligibility for antlerless or other type hunts. However, hunters who participate in any deer, elk, or pronghorn depredation hunt may not possess an additional antlerless permit for that species during the same year except as provided in Subsection R657-5-50(3).

(b) Hunters with depredation permits for doe pronghorn,[~~ or~~] antlerless deer [~~and~~]or antlerless elk may not possess any other permit for those species, except [~~hunters may possess a buck deer permit and a depredation antlerless deer permit.~~]as provided in Subsections R657-5-27(1)(a) and R657-5-50(3), and the proclamation of the Wildlife Board for taking big game.

(4) The division may contact hunters to participate in a depredation hunt prior to the general hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, or pronghorn permit may purchase an appropriate permit.

(5) Applications must be sent to the appropriate regional division office for the area requested.

(6) Applications must be received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-59. Antlerless Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (4):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (4):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose, if permits are available during the current year.

(4) Any person who has obtained any elk permit, a pronghorn permit, or a moose permit may not apply for an antlerless elk permit, doe pronghorn permit, or antlerless moose permit, respectively, except as provided in Section R657-5-63.

(5) A person may not submit more than one application in the initial drawing per each species as provided in Subsections (2) and (3).

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-61(3) and R657-5-63(4).

(7)(a) [~~A Wildlife Habitat Authorization may be purchased before applying, or the Wildlife Habitat Authorization will be issued to the applicant upon successfully drawing a permit. The~~

~~Wildlife Habitat Authorization number or the fee must be submitted with the application.~~

~~(8)(a) ~~]Applications must be mailed by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

[~~(9)(a)~~](8)(a) Late applications will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw data base to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The $5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

[~~(10)~~](9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

[~~(11)~~](10) To apply for a resident permit, a person must establish residency at the time of purchase.

[~~(12)~~](11) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-60. Fees for Antlerless Applications.

(1) Each application must include:

(a) the permit fee for each species applied for; and

(b) a $5 nonrefundable handling fee for each species applied for.[~~; and~~

~~(c) the Wildlife Habitat Authorization fee, if it has not yet been purchased.~~]

(2)(a) Personal checks, money orders, cashier's checks and credit cards are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) All payments must be made payable to the Utah Division of Wildlife Resources.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(c) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4)(a) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

(b) The division shall charge a returned check collection fee for any check returned unpaid.

(5) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit card is invalid or refused.

(6) Any fee errors must be corrected with a money order or cashier's check through the application correction process.

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R657-5-64. Application Withdrawal.

(1) A person may withdraw their application for [~~the bucks, bulls~~]premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime[~~- drawing~~], and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(3) A person may not amend a withdrawn application, nor reapply after the application has been withdrawn.

(4) Handling fees will not be refunded.

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R657-5-66. Special Hunt Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2)(a) Residents and nonresidents may apply.

(b) Any person who was unsuccessful in the Bucks, Bulls and Once-In-A-Lifetime or Antlerless drawing may apply. However, any person who has obtained a permit may not apply, unless otherwise provided in this rule and the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) [~~A wildlife habitat authorization may be purchased before applying, or the wildlife habitat authorization will be issued to the applicant upon successfully drawing a permit.~~

~~(4)(a) ~~]Applications must be mailed by the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

[~~(5)~~](4) Bonus points will be used in the special hunt drawings to improve odds for drawing permits as provided in

Section R657-5-40. However, bonus points will not be awarded for unsuccessful applications in the special hunt drawings.

[~~(6)~~](5) Any person who obtains a special hunt permit is subject to all rules and regulations provided in this rule, the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, unless otherwise provided in Sections R657-5-65 through R657-5-70.

R657-5-67. Fees for Special Hunt Applications.

(1) Each application must include:

(a) the permit fee for the species applied for; and

(b) a $5 nonrefundable handling fee.[~~; and~~

~~(c) the wildlife habitat authorization fee, if it has not yet been purchased.~~]

(2)(a) Personal checks, money orders, cashier's checks and credit cards are accepted from residents.

(b) Money orders, cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(c) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

. . . . . .

KEY: wildlife, game laws, big game seasons*

[~~August 1, 2000~~]2001	**23-14-18**
Notice of Continuation November 30, 2000	**23-14-19**
	23-16-5
	23-16-6

Natural Resources, Wildlife Resources

R657-17

Lifetime Hunting and Fishing License

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23358

FILED: 11/30/2000, 18:27

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's Lifetime Hunting and Fishing License program.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended to eliminate the Wildlife Habitat Authorization, pursuant to S.B. 248, 2000 Legislative Session. Provisions are being amended to clarify deadlines for obtaining a general deer permit. Section R657-17-5 is being amended to eliminate the credit, authorized by the director for lifetime license holders, to offset the cost of a limited entry permit if obtaining a limited entry permit precludes the lifetime license holder to receive a general deer permit, which is no longer applicable. Other changes are being made for consistency and clarity.

(DAR Note: S.B. 248 is found at 2000 Utah Laws 195, and will be effective January 1, 2001.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-17.5

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This amendment clarifies the procedures and requirements applicable to lifetime license holders. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget.

❖LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖OTHER PERSONS: The amendments provide procedures and requirements applicable to lifetime license holders, therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments are for clarification and providing requirements and procedures for lifetime license holders. The DWR determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or by Internet E-mail at nrdwr.dsundell@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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: John Kimball, Director

R657. Natural Resources, Wildlife Resources.
R657-17. Lifetime Hunting and Fishing License.

. . . . . .

R657-17-3. Lifetime License Entitlement.

(1) (a) A permanent lifetime license card shall be issued to lifetime licensees in lieu of an annual [~~wildlife habitat authorization,~~]small game, and fishing license.

(b) The issuance of a permanent lifetime license card does not authorize a lifetime licensee to all hunting privileges. The lifetime licensee is subject to the requirements as provided in Subsection R657-17-1(2).

(2) In addition to a lifetime license card, each lifetime licensee shall receive without charge, a permit and tag of his choice for one of the following general deer hunts:

(i) general archery buck deer;

(ii) general season buck deer; or

(iii) general muzzleloader buck deer.

(3) Sales of lifetime hunting and fishing licenses may not be refunded, except as provided in Section 23-19-38.

(4) Lifetime hunting and fishing licenses are not transferable.

(5) Lifetime hunting and fishing licenses are no longer for sale as of March 1, 1994.

R657-17-4. General Deer Permits and Tags.

(1)(a) The division shall, prior to the annual bucks, bulls and once-in-a-lifetime application period, send a [~~big game~~]Lifetime General Deer questionnaire to each lifetime licensee who is eligible to hunt big game.

(b) The lifetime licensee shall correctly fill out the questionnaire indicating the lifetime licensee's choice of general deer permits as provided in Subsection R657-17-3(2) and the region in which the lifetime licensee chooses to hunt.

(c) The questionnaire must be returned by mail to the Salt Lake division office and must be received no later than [~~the last day of the big game application period. Questionnaires received after the last day of the application period may be returned.~~]two weeks prior to the posting date of big game drawing.

(2)(a) Except as provided in Subsection (c) and Subsection (d), the division may not issue a permit to any lifetime licensee who was given reasonable notice of the [~~big game application period~~]deadline as provided in Subsection (1)(c) and fails to return a complete and accurate [~~big game~~]Lifetime General Deer questionnaire to the division[~~during the prescribed application period~~].

(b) The division shall make a good faith effort to notify any lifetime licensee who has made a material error in completing the questionnaire. However, if the division is unable to contact the lifetime licensee and correct the error, the questionnaire shall be void and the lifetime licensee may not receive a permit, except as provided in Subsection (d).

(c) The director or his designee may issue a permit to a lifetime licensee who did not receive reasonable notice of the [~~big game application period.~~]deadline as provided in Subsection (1)(c).

[~~(3)~~](d) If a lifetime licensee fails to return a Lifetime General Deer questionnaire by the deadline as provided in Subsection (1)(c), the lifetime licensee may obtain an available general deer permit on the date these permits are made available over-the-counter to the general public.

(e) As used in this section "reasonable notice" means that a [~~big game~~]Lifetime General Deer questionnaire was sent within a reasonable time before the [~~application period~~]deadline as provided in Subsection (1)(c) to the most recent address given to the division by the lifetime licensee.

[~~(4)~~](3) Lifetime licensees must notify the division of any change of mailing address, residency, address, telephone number, physical description, or driver's license number.

R657-17-5. Applying for Limited Entry Permits in the Bucks, Bulls and Once-In-A-Lifetime Drawing.

(1) A lifetime licensee may apply for a limited entry permit offered through the bucks, bulls and once-in-a-lifetime drawing using a bucks, bulls and once-in-a-lifetime application published by the division.

(2) Limited entry permit species and application procedures are provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(3)(a) If the lifetime licensee applies for and is successful in obtaining a premium limited entry, limited entry, [~~high country~~]or cooperative wildlife management unit buck deer permit in the bucks, bulls and once-in-a-lifetime drawing, a general deer permit will not be issued.

(b) If the lifetime licensee does not draw a premium limited entry, limited entry, [~~high country~~]or cooperative wildlife management unit buck deer permit in the bucks, bulls and once-in-a-lifetime drawing, the general deer permit requested on the [~~questionnaire shall be issued.~~]Lifetime General Deer Questionnaire shall be issued.

[~~(4)(a) The director may authorize a credit to be given to lifetime licensees to offset part of the cost of a limited entry permit if obtaining a limited entry permit precludes the lifetime licensee from being eligible to receive a general deer permit under the rules and proclamations of the Wildlife Board.~~

~~(b) A credit authorized by the director shall not be construed:~~

~~(i) to grant lifetime licensees any entitlement not expressly provided under Section 23-19-17.5; or~~

~~(ii) to establish the value of the general deer permit.~~

~~(c) A credit may be used only toward obtaining a permit during the year in which the credit is authorized.~~

~~(5)~~](4) Applying for or obtaining an antlerless deer, antlerless elk, or doe pronghorn permit does not affect eligibility for obtaining a general buck deer permit.

[~~(6)~~](5) All rules established by the Wildlife Board regarding the availability of big game permits in relation to obtaining general deer permits shall apply to lifetime licensees.

. . . . . .

R657-17-8. Lost or Stolen Lifetime Hunting and Fishing License.

(1) If a lifetime hunting and fishing license is lost or stolen, a duplicate may be obtained from any division office.

(2) The lifetime licensee shall:

(a) present a valid driver's license, identification card, birth certificate, or other form of proper identification;

(b) sign an affidavit stating the lifetime hunting and fishing license was lost or stolen; and

(c) pay a [~~$5~~]duplicate lifetime hunting and fishing license fee.

KEY: wildlife, game laws, hunting and fishing licenses*
[~~January 1, 1997~~]2001 **23-19-17.5**
Notice of Continuation November 30, 2000 **23-19-40**
23-19-11

Natural Resources, Wildlife Resources
R657-38
Dedicated Hunter Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23360
FILED: 11/30/2000, 18:27
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's Dedicated Hunter Program.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended to eliminate the Wildlife Habitat Authorization, pursuant to S.B. 248, 2000 Legislative Session. Provisions are being amended to clarify deadlines for obtaining a dedicated hunter general deer permit, attending education courses and Regional Advisory Council meetings, and completing service hour requirements. Provisions are being amended to clarify procedures and requirement in surrendering the dedicated hunter permit if a participant obtains a premium limited entry, limited entry, landowner or conservation buck deer permit. Other changes are being made for consistency and clarity.
(DAR Note: S.B. 248 is found at 2000 Utah Laws 195, and will be effective January 1, 2001.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: This amendment clarifies the procedures and requirements applicable to participants in the Dedicated Hunter Program. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget.
❖LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
❖OTHER PERSONS: The amendments provide procedures and requirements applicable to participants in the Dedicated Hunter Program, therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.
COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments are for clarification and providing requirements and procedures for participants in the Dedicated Hunter Program. The DWR determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or by Internet E-mail at nrdwr.dsundell@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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: John Kimball, Director

R657. Natural Resources, Wildlife Resources.
R657-38. Dedicated Hunter Program.
R657-38-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for obtaining a certificate of registration to:

(a) maximize opportunity for recreational deer hunting;

(b) increase public participation in wildlife management programs and projects that are beneficial to wildlife and the division; and

(c) provide courses in hunter ethics [~~and~~]or wildlife management principles.

R657-38-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Education course" means a course of instruction provided by the division in hunter ethics [~~and~~]or wildlife management principles.

(b) "Hunt area" means an area prescribed by the Wildlife Board where general archery, general season or general muzzleloader deer hunting is open to permit holders for taking deer.

(c) "Participant" means a person who has obtained and signed a certificate of registration for the Dedicated Hunter Program.

(d) "Program" means the Dedicated Hunter Program, a program administered by the division as provided in this rule.

(e) "Wildlife project" means a project designed by the division, or any other individual or entity and pre-approved by the division, that provides wildlife habitat protection or enhancement on public or private lands, improves hunting or fishing access, or other projects or activities that benefit wildlife or directly benefits the division.

(f) "Wildlife Project manager" means an employee of the division, or person approved by the division, responsible for supervising a wildlife project and maintaining and reporting records of service hours to the division.

R657-38-3. Certificate of Registration Required.

(1) A person may not participate in the dedicated hunter program if that person has been convicted of any of the following violations of Title 23, Wildlife Resources Code, or any rule or proclamation of the Wildlife Board, or is currently on wildlife license revocation:

(a) a felony;

(b) a Class A misdemeanor in the last five years; or

(c) three or more Class B or Class C misdemeanors in the past five years.

(2)(a) To participate in the program a person must sign and obtain a certificate of registration from the division.

(b) No more than ten thousand certificates of registration for the program may be in effect at any given time.

(c) Each participant must provide proof of having attended an education course before the division may issue the certificate of registration for the program.

(d) A certificate of registration to participate in the program may not be issued to any person after April 1 annually.

(3) Each certificate of registration is valid for a three-year period.

(4)(a) Any person who is 14 years of age or older may obtain a certificate of registration. A person 13 years of age may obtain a certificate of registration if the date of that person's 14th birthday is before the end of the [~~annual muzzleloader season set for the~~]calendar year in which the certificate of registration is issued.

(b) Any person who is 17 years of age or younger before the beginning date of the annual archery deer hunt shall pay the youth participant fees.

(c) Any person who is 18 years of age or older on or before the beginning date of the annual archery deer hunt shall pay the adult participant fees.

(5) A certificate of registration authorizes the participant an opportunity to receive annually a dedicated hunter permit to hunt during the general archery, general season and general muzzleloader deer hunts. The dedicated hunter permit may be used during the dates and within the hunt area boundaries established [~~annually~~]by the Wildlife Board[~~in the proclamation for taking big game~~].

(6) Except as provided in Subsection R657-38-7(8), a participant entering the program may take two deer within three years.

(7) A participant may take only one deer in any one year, except as provided in Subsection R657-38-7(8).

(8)[~~(a) In addition to the certificate of registration, the participant must purchase a wildlife habitat authorization each year.~~

~~(b) Lifetime license holders are not required to purchase an annual wildlife habitat authorization pursuant to Section 23-19-42.~~

~~(9)~~] The certificate of registration must be signed by the participant and a division representative. The certificate of registration is not valid without the required signatures.

[~~(10)~~](9) The participant and holder of the certificate of registration must have a valid dedicated hunter permit in possession while hunting.

[~~(11)~~](10) Certificates of registration are not transferable and expire three years from the date of issuance.

[~~(12)~~](11) Certificates of registration will not be issued to any person who has previously obtained a certificate of registration if that person has failed to provide the service requirements or fees.

R657-38-4. Dedicated Hunter General Permits.

(1) Participants may hunt during the general archery, general season and general muzzleloader deer hunts within the hunt area and during the season dates prescribed in the proclamation of the Wildlife Board for taking big game.

(2) Participants must designate a regional hunt choice on joining the program.

(3)(a) The division shall, prior to [~~the annual bucks, bulls and once-in-a-lifetime application period~~]January 1 annually, send a form to each participant.

(b) The participant shall fill out this form indicating the participant's regional general buck deer hunt choice.

(c) The form must be returned [~~by mail to~~]to the dedicated hunter staff in the Salt Lake Division office and must be received prior to [~~the posting of the bucks, bulls and once-in-a-lifetime drawing as provided in the proclamation of the Wildlife Board for taking big game.~~]January 15 annually.

(d) If the form is not received by the [~~division prior to the posting of the bucks, bulls and once-in-a-lifetime drawing and the participant has not obtained a permit by mail~~]dedicated hunter staff in the Salt Lake Division office prior to January 15 annually, the participant must obtain a dedicated hunter permit from a division office beginning on the date general deer permits are made available over-the-counter to the general public.

(e) Dedicated hunter permits issued to participants over-the-counter shall be for open regions only.

(f) Participants must submit written notification of any changes to their regional hunt choice to the dedicated hunter program staff in the Salt Lake Division office by April 1 annually.

(4) Participants must notify the [~~division~~]dedicated hunter program staff in the Salt Lake Division office of any change of mailing address in order to receive a permit by mail.

[~~(5) Except as provided in Subsection R657-38-7(8), only one deer may be taken in any one year.~~

~~(6)(a)~~](5)(a) Lifetime license holders may participate in the dedicated hunter program.

(b) Upon signing the certificate of registration, the lifetime license holder agrees to forego any rights to receive a general archery, general season or general muzzleloader permit as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general season or general muzzleloader permit.

[~~(d) Lifetime license holders may join the dedicated hunter program at half of the original cost of the program.~~

~~(7)~~](6) A participant may not exchange or surrender dedicated hunter permits for any other buck deer permits once the dedicated hunter permit is issued and any of the specified general deer hunts have begun.

R657-38-5. Education Course.

(1)(a) The division shall provide an annual education course.

(b) The participant must attend two education courses during the three-year period as provided in Subsection R657-38-9(1)(b).

(c) Completion of an education course is mandatory prior to obtaining a certificate of registration for the program.

(2)(a) The education course shall explain the program in detail to give a prospective participant a reasonable understanding of the program as well as hunter ethics [~~and~~]or wildlife management principles.

(3) Education courses are scheduled by regional division offices.

(4) Proof of having completed the education course is provided to the prospective participant upon completion of the education course. Certificates of registration are not issued without verification of having completed the education course.

R657-38-6. Wildlife Projects.

(1)(a) Each participant in the program shall:

(i) provide no fewer than eight hours of service, by August 1 annually, working on a wildlife project or other division approved program or activity; or

(ii) pay a fee of $18.75 for each hour not completed.

(b) Residents may not substitute more than 16 of the 24 total required service hours. Nonresidents may substitute all of the 24 total required service hours.

(c) The division may, upon request, approve a person who is physically unable to provide service by working on a wildlife project to provide other forms of service.

(2) Wildlife projects shall be designed by the division, or any other individual or entity and pre-approved by the division.

(3)(a) Wildlife projects may occur anytime during the year as determined by the division.

(b) The division shall publicize the dates, times, locations and description of approved projects and activities at regional offices.

(4) [~~Participants shall sign up at least two weeks before the date of the wildlife project or activity by notifying~~](a) Participants who do not complete annual wildlife project hours by August 1 shall not be sent a dedicated hunter permit through the mail.

(b) A dedicated hunter permit may be issued by a regional division office after service hours are completed or paid for.

(c) Dedicated hunter permits issued to participants who fail to make the August 1 deadline annually shall be for open regions only.

(5) Proof of the number of hours worked shall be provided to the participant.

(6) If a participant fails to fulfill the service requirement for any year of participation, the participant will not be issued a dedicated hunter permit for that year. The participant may obtain a permit for subsequent years upon completion of the service requirements due or payment of the fee in lieu thereof.

(7) The wildlife project manager shall keep a receipt of all participants who attend the wildlife project and the number of hours worked. A copy of the receipt shall be returned by the participant for record keeping purposes.

R657-38-7. Obtaining Other Permits.

(1)(a) Participants may apply for or obtain premium limited entry, limited entry, cooperative wildlife management unit, landowner or area conservation buck deer permits as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(b) Participants may not apply for or obtain general deer permits through the big game drawing as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(2)(a) If the participant obtains premium limited entry, limited entry, landowner or conservation buck deer permit, the participant must surrender their dedicated hunter permit prior to the opening day of the general archery deer season.

(b) If the participant fails to surrender the dedicated hunter permit prior to the opening day of the general archery deer season, any other deer permits obtained by the participant shall be deemed invalid.

(3)[~~(2)~~] If the participant obtains a any weapon limited entry, [~~cooperative wildlife management unit~~]landowner or area conservation general season buck deer permit, the participant may use the permit in the prescribed area:

(a) provided the participant surrenders any dedicated hunter permit prior to the opening day of the general archery [~~buck~~]deer season;

(b) during the season dates listed on the permit; and

(c) during the dates prescribed for [~~the general~~]archery[~~, general season and general~~] and muzzleloader hunts for the specific unit.

(4)[~~.~~

~~(3)~~] The division may exclude multiple season opportunities on specific units due to extenuating circumstances on that specific unit.

[~~(4)~~](5) If the participant is successful in drawing a limited entry archery or muzzleloader buck deer permit, the participant may use the permit in the prescribed area during the season dates listed on the permit.

[~~(5)~~](6) The permit must be on the person while hunting.

[~~(6)~~](7) Obtaining a limited entry, cooperative wildlife management unit, landowner or area conservation buck deer permit does not authorize a participant to take an additional deer.

[~~(7)~~](8) Participants who [~~draw~~]obtain a cooperative wildlife management unit permit may hunt on the cooperative wildlife management unit only during the dates determined by the landowner/operator, provided the participant surrenders any dedicated hunter permit prior to the opening day of the general archery buck deer season.

[~~(8)(a)~~](9)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game.

(b) Antlerless permits do not count against the number of tags issued pursuant to this program.

R657-38-8. Reporting Requirements.

(1) Each participant must annually report to the division:

(a) whether a deer was taken; and

(b) any other information requested by the division.

(2) The report must be [~~submitted to the division~~]received by the dedicated hunter program staff in the Salt Lake Division office annually by January 15[~~1~~].

(3) Any dedicated hunter buck deer permit and tag that is not used to tag a deer must be [~~returned to the division with the report~~]received with the report by the dedicated hunter program staff in the Salt Lake Division office. If the unused tag is not [~~submitted~~]received with the report, the permit shall be considered to have been filled.

(4) The division shall make report forms available to participants.

R657-38-9. Contractual Obligations.

(1) In addition to incorporating the provisions of this rule, the certificate of registration shall expressly state the terms of the program including the following:

(a) The participant shall agree to perform the required service hours working for the division or other organizations as approved by the division. The hours shall be completed during the times prescribed by the division. If the participant is unable to perform the required service hours, a fee of $18.75 shall be paid for each hour not completed. Residents may not substitute more than 16 of the 24 total required service hours. Nonresidents may substitute all of the 24 total required service hours. The service hours shall be performed or a fee paid even in the event the certificate of registration is revoked or the participant withdraws from the program. The participant shall also agree to pay court costs and attorney fees associated with collecting any unpaid balance;

(b) The participant shall agree to attend two education courses during the three-year period, one of which must be completed before the division may issue the certificate of registration for the program, and the second education course must be completed during the second or third year, and prior to obtaining a permit to hunt deer in the third year of participation;

(c) The participant shall agree to attend at least one regional advisory council meeting [~~during the three-year period~~]prior to obtaining a permit in the second year of participation[~~, in the dedicated hunter program~~]; and

(d) The participant shall agree not to purchase or obtain, or attempt to purchase or obtain, any buck deer permit in Utah, except as allowed under the provisions of this rule until after the expiration date of the certificate of registration.

(2) In addition to the terms provided in Subsection (1), the division may require the participant to agree to other provisions consistent with this rule for the administration of this program.

R657-38-10. Dedicated Hunter Program Drawing.

(1) Any unfilled dedicated hunter permit may be entered into a drawing.

(2) One limited entry deer permit and one limited entry elk permit shall be offered through the drawing for each 250 permits entered.

(3) The results of the drawing shall be published at division offices.

(4)(a) [~~Participants~~]The division shall [~~be notified by mail of~~]make the date and [~~location~~]time of the drawing available to the public.

(b) Successful participants are notified by mail.

(5)(a) The limited entry deer permits may be used within the boundaries of the limited entry deer hunt area and during the dates specified in the proclamation of the Wildlife Board for taking big game.

(b) The limited entry elk permits may be used within the boundaries of the limited entry hunt area and during the dates specified in the proclamation of the Wildlife Board for taking big game.

(6)(a) Successful participants shall incur the appropriate waiting period for the species drawn as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(b) Successful participants will not forfeit any bonus points as a result of drawing a permit through the dedicated hunter drawing.

. . . . . .

KEY: wildlife, hunting, recreation, ethics
[~~April 4, 2000~~]2001 **23-14-18**
Notice of Continuation November 30, 2000

Natural Resources, Wildlife Resources
R657-41
Conservation and Sportsman Permits

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23362
FILED: 11/30/2000, 18:27
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's Conservation and Sportsman Permits program.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended to clarify that an "Area Conservation Permit" issued for a limited entry unit is not valid on cooperative

wildlife management units, and an "Area Conservation Permit" issued for a general season hunt area is not valid on cooperative wildlife management units or limited entry units. Table 1 under Section R657-41-3, which provides the recommended number of conservation permits, is being eliminated. Section R657-41-4 is being amended to clarify the information that the conservation organization must provide to the division to obtain conservation permits; and the criteria the division shall use in recommending the conservation organization to receive permits. Other changes are being made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: This amendment clarifies the standards and procedures for issuing conservation and sportsman permits. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget.
❖LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
❖OTHER PERSONS: The amendments clarify the standards and procedures for issuing conservation and sportsman permits, therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.
COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments are for clarification and providing procedures for issuing conservation and sportsman permits. The DWR determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or by Internet E-mail at nrdwr.dsundell@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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: John Kimball, Director

R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.

. . . . . .

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a specific species, and may include an extended season, or legal weapon choice, or both, beyond the general season.

(i) Area Conservation permits issued for limited entry units are not valid on cooperative wildlife management units, and Area Conservation permits issued for general season hunt areas are not valid on cooperative wildlife management units or limited entry units.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division for purposes identified in Section R657-41-1(2).

(d) "Sportsman Permit" means a harvest permit authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(e) "Statewide Conservation Permit" means a permit which allows a permittee to hunt:

(i) big game species on any open unit from September 1 through December 31, except pronghorn and moose from September 1 through October 31;

(ii) turkey on any open unit from April 1 through May 31;

(iii) any other small game species on any open unit during the season authorized by the Wildlife Board;

(iv) bear on any open unit during the season authorized by the Wildlife Board for that unit; and

(v) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective.

R657-41-3. Method for Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2)[~~ The recommended number of conservation permits available will be based on the following table.~~

~~TABLE 1~~
~~PERMIT NUMBERS~~

~~Public Permits~~	~~Conservation Permits~~
~~2-14~~	~~1~~
~~15-24~~	~~2~~
~~25-34~~	~~3~~
~~35-44~~	~~4~~
~~45-54~~	~~5~~
~~55-70~~	~~6~~
~~71-85~~	~~7~~
~~86-100~~	~~8~~
~~101+~~	~~9~~

~~(3)~~] One statewide conservation permit may be authorized for each big game and small game species for which limited permits are available.

[~~(4)~~](3) A limited number of area conservation permits may be authorized, with a maximum of 5% of the permits or eight permits, whichever is less, for any unit or hunt area, unless a higher number is specifically authorized by the Wildlife Board.

[~~(5)~~](4) The number of conservation and sportsman permits available for use during the following year will be determined by the Wildlife Board annually.

[~~(6)~~](5) Area Conservation permits shall be deducted from the number of public drawing permits.

[~~(7)~~](6) One sportsman permit may be authorized for each statewide conservation permit authorized.

R657-41-4. Obtaining Conservation Permits.

(1) Statewide and area conservation permits are available to eligible conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities.

(2) Conservation organizations may apply for conservation permits by sending an application to the division for each permit requested.

(3) The application must be submitted to the division by September 1 to be considered for the following year's conservation permits. Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax exempt status under Internal Revenue Code, Section 501C-3 as amended;

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

(e) the type of permit and species for which the permit is requested; and

(f) any requested variances for an extended season or legal weapon choice for area conservation permits.

(4)(a) Conservation organizations must include the information as provided in Subsection (b) or (c).

(b) The proposed bid amount for each permit. The proposed bid amount is the revenue the organization anticipates to be raised from[~~estimated revenue expected to be returned to the division.~~

~~(i) The estimated revenue must be based on 90% of~~] the auction or fund raising activity [~~amount being submitted to the division, or the~~]. The recommended minimum [~~amount listed in the following table, whichever is greater.~~]permit bid amount is listed in Table 1.

[~~(ii)~~](i) The basis for the [~~estimated revenue to the division~~]bid amount must include the conservation organization's experience in similar activities, and details of the marketing plan.[

~~(iii) The remaining 10% of the auction or fund raising activity amount may be retained by the conservation organization for administrative expenses. If the conservation organization is paying the permit and Wildlife Habitat Authorization fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization.~~]

[~~TABLE 2~~]TABLE 1
RECOMMENDED MINIMUM PERMIT BID AMOUNT

Species	Statewide	Area
Rocky Mountain Bighorn (Ram) [~~$40,000~~]$30,000		$20,000
Desert Bighorn (Ram)	30,000	20,000
Buck Deer	10,000	2,000
Bull Elk	10,000	4,000
Bull Moose	10,000	3,000
Bison (Hunter's Choice)	5,000	5,000
Rocky Mountain Goat (Hunter's Choice)	5,000	3,000
Buck Pronghorn	2,000	1,000
Black Bear	2,000	1,000
Cougar	2,000	500
Turkey	350	250

(c) A specific project proposal that includes:

(i) a schedule for project completion;

(ii) the benefits to the identified species;

(iii) justification for the conservation organization retaining more than ten percent of the revenue, showing increased benefit to the species, over remitting the funds to the division. Under this option, the division must receive the cost of the permit.

(iv) Proposals which integrate well with the division's species plans and objectives will be given emphasis in the evaluation.

(5) An application which is incomplete or completed incorrectly may be rejected.

(6) The application of a conservation organization that has not fully reported on the preceding years conservation permits may be rejected.

(7) The division shall recommend the conservation organization to receive each of the conservation permits based on:

(a) first, the bid amount pledged to the species, adjusted by:

(i) the performance of the organization over the previous two years in meeting proposed bids;

(ii) if returning the bid amount to the division, [~~the percent of the proposed bid, at least 90%, returned to the division; and~~]at least 90% of the bid amount;

(iii) if retaining the bid amount for projects, [~~the increased monetary benefit of the projects, which cannot include any other conservation permit revenue or division funding sources, at least 100%~~]at least 90% of the bid amount, multiplied by the percent the project integrates with species plans and objectives; and

(iv) organizations must maintain a minimum two-year average performance of 70% to be eligible for consideration of permits. Performance of the organization is the proportion of the amount returned to the division, divided by 90% of the bid amount for all permits, calculated annually and averaged for the last two years.

(b) second, if two or more conservation organizations are tied using the criteria in Subsection (a), the closeness of the organization's purpose to the species of the permit; and

(c) third, if two or more conservation organizations are tied using the criteria in Subsection (a) and (b), the geographic closeness of the organization to the location of the permit.

(8)(a) Between the time the division recommends that a conservation permit be awarded to a conservation organization and the time the Wildlife Board approves that recommendation, a conservation organization may withdraw their application for any given permit or exchange their application with another conservation organization without penalty, provided the bid amount upon which the permit application was evaluated is not changed.

(b) If a conservation organization withdraws it's bid and the bid is awarded to another organization at a lower amount, then the difference between the two bids will be subtracted from the organization making the higher bid for purposes of evaluating organization performance.

(9) The Wildlife Board will make the final assignment of conservation permits at a meeting prior to December 1 annually, based on the:

(a) division recommendation;

(b) benefit to the species;

(c) historical contribution of the organization to the conservation of wildlife; and

(d) previous performance of the conservation organization.

(10) The division and conservation organization receiving the permits shall enter into a contract.

(11)(a) The conservation organization receiving permits shall certify that the permits are distributed by lawful means.

(b) The conservation organization must:

(i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and

(ii) notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.

(c) If a person is selected by a qualified organization to receive a conservation permit and is also successful in obtaining a permit for the same species in the same year through the Bucks, Bulls and Once-In-A-Lifetime Drawing, that person may designate another person to receive the conservation permit, provided the conservation permit has not been issued by the division to the first selected person.

(d) If a person is selected by a qualified organization to receive a conservation permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(i) the conservation organization selects the new recipient of the permit;

(ii) the amount of money received by the division for the permit is not decreased;

(iii) the conservation organization relinquishes to the division 90% of all proceeds generated from the alternate permit transfer or uses the funds for projects authorized by the division pursuant to this rule;

(iv) the conservation organization and the initial designated recipient of the permit, must sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(v) the permit has not been issued by the division to the first designated person.

(e) Except as otherwise provided under Subsection (c) and (d), a person designated by a conservation organization as a recipient of a conservation permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(12) [~~By~~]All permits must be marketed by September 1, annually.

(13) Within 30 days of the last event, but no later than September 1 annually, the conservation organization [~~receiving the permit shall report~~]must submit to the division:

(a) a final report on the distribution of [~~each permit and~~]permits;

(b) the funds due to the division; and

(c) a report on the status of each project contained in the application.

(14) Permits shall not be issued until funds due to the division are received. Ten percent of the auction or fund raising activity amount may be retained by the conservation organization for administrative expenses. If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization.

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R657-41-6. Using a Conservation or Sportsman Permit.

(1)(a) A conservation or sportsman permit allows the recipient to take only the species for which the permit is issued.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:

(a) when applying for conservation or sportsman permits; or

(b) in obtaining conservation or sportsman permits.

(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-5, R657-6, R657-10 and R657-33.

KEY: wildlife, wildlife permits
[~~August 1, 2000~~]2001 **23-14-18**
Notice of Continuation November 30, 2000 **23-14-19**

Natural Resources, Wildlife Resources
R657-42
Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23364
FILED: 11/30/2000, 18:27
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's Accepted Payment of Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended to clarify that if a person surrenders a permit for the purpose of waiving a waiting period and reinstating bonus points, that person's number of bonus points, including bonus points for the current year will be reinstated. Provisions are being added to provide that if a license or permit is not issued, due to division error or third-party errors, the division may use the Division Error Policy to mitigate or correct the error. Provisions are added to provide the accepted method of payment for licenses, permits or certificates of registration. Other changes are being made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-19-1 and 23-19-38

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: This amendment clarifies the standards and procedures for the Accepted Payment of Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget.
❖LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
❖OTHER PERSONS: The amendments provide standards and procedures applicable to Accepted Payment of Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits. Therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.
COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments are for clarification and providing standards and procedures for the Accepted Payment of Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits. The DWR determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or by Internet E-mail at nrdwr.dsundell@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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: John Kimball, Director

R657. Natural Resources, Wildlife Resources.
R657-42. <u>Accepted Payment of Fees,</u> Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.

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R657-42-4. Surrender of Licenses, Certificates of Registration and Permits.

(1) Any person who has obtained a license, certificate of registration or permit and decides not to use it, may surrender the license, certificate of registration or permit to any division office.

(2) Any person who has obtained a license, certificate of registration or permit may surrender the license, certificate of registration or permit prior to the season opening date of the license, certificate of registration or permit for the purpose of:

(a) waiving the waiting period normally assessed and reinstating the number of bonus points, <u>including a bonus point for the current year as if a permit had not been drawn,</u> if applicable; or

(b) purchasing a reallocated permit or any other permit available for which the person is eligible.

(3) A Cooperative Wildlife Management Unit permit must be surrendered before the following dates:

(a) the opening date for the respective general archery season for buck deer, bull elk or spike bull elk;

(b) September 1 for pronghorn and moose;

(c) August 15 for antlerless deer and elk;

(d) prior to the applicable season date for small game and waterfowl; and

(e) prior to the applicable season date of any variance approved by the Wildlife Board in accordance with Rules R657-21 and R657-37.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season.

(5) The division may not issue a refund, except as provided in Section R657-42-5.

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R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and Cooperative Wildlife Management Unit permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits, that person may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Division Error Policy.

(c)[~~(b)~~] The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

[~~(c)~~](d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

[~~(d)~~](e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season opens for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and proclamations of the Wildlife Board.

(5) Any private Cooperative Wildlife Management Unit permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the [~~Division~~]division in accordance with Rule R657-37.

(6)(a) The division may allocate additional general deer permits and limited entry permits, if biologically consistent with unit objectives, to address errors in accordance with the Division Error Policy.

(b) The division shall not allocate additional Cooperative Wildlife Management Unit and Once-In-A-Lifetime permits.

(c) The division may extend deadlines to address errors in accordance with the Division Error Policy.

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R657-42-8. Accepted Payment of Fees.

(1) Personal checks, money orders, cashier's checks, and cards are accepted for payment of licenses, permits or certificates of registration.

(2) Personal checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks and credit cards will not be accepted as combined payment on single or group applications.

(c) If applicable, if applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(d) Handling fees are charged to the credit card when the application is processed. Applicable license and permit fees are charged after the drawings, if successful.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit card is invalid or refused.

(8) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(9) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(10) Any person who fails to pay the required fee for any license, permit or certificate of registration, shall be ineligible to obtain any other license, permit, tag, or certificate of registration until the delinquent fees and associated collection costs are paid.

KEY: wildlife, permits
[~~January 15, 1999~~]2001 **23-19-1**
Notice of Continuation November 30, 2000 **23-19-38**

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Public Safety, Fire Marshal
R710-4
Buildings Under the Jurisdiction of the State Fire Prevention Board

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23339
FILED: 11/28/2000, 14:15
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board proposes to amend the currently enacted rule R710-4, by updating two National Fire Protection Association (NFPA) standards as incorporated references. The Board also wishes to update the rule to the currently adopted National Electric Code as an incorporated reference as so completed under the authority of the Uniform Building Standards Act.

SUMMARY OF THE RULE OR CHANGE: On November 2, 2000, the Utah Fire Prevention Board met and addressed the following proposed changes: In Section R710-4-1.1, the board proposes to update the currently adopted incorporated reference, National Fire Protection Association (NFPA) Standard 101, Life Safety Code, 1997 edition to the 2000 edition; In Section R710-4-1.2, the board proposes to update the currently adopted incorporated reference, National Fire Protection Association (NFPA), Standard 13, Installation of Sprinkler Systems, 1996 edition to the 1999 edition; and, In Section R710-4-1.4, the board wishes to update the National Fire Protection Association (NFPA), Standard 70, National Electric Code, 1996 edition to the 1999 edition. The National Electric Code was adopted earlier by the Building Codes Commission, as enacted under the authority of the Uniform Building Standards Act, and in error, Section R710-4-1.4 was not updated to this previously adopted incorporated reference.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Fire Protection Association (NFPA), Standard 101, Life Safety Code, 2000 edition; National Fire Protection Association (NFPA), Standard 13, Installation of Sprinkler Systems, 1999 edition; and, National Fire Protection Association (NFPA), Standard 70, National Electric Code, 1999 edition

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There will be a cost to the state budget to reprint the changed rule, R710-4, and redistribute this rule to those who are affected by the rule change. There would also be the cost of purchasing the newly adopted NFPA standards at a cost of $48.50 for NFPA 101, $38.75 for NFPA 13, and $51.50 for NFPA 70. The aggregate cost would be estimated at approximately $800.

❖LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government unless the local government agency wished to have a copy of the newly adopted standard for reference.

❖OTHER PERSONS: The anticipated cost to other persons would depend on the number of persons that would wish to purchase the above stated NFPA standards for their reference. The total anticipated aggregate cost cannot be estimated due to the unknown number of NFPA standards that would be purchased.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost to the state budget would be approximately $800 to print the rule, send it to all affected by the changes, and purchase copies of the NFPA standard to use. The compliance cost for affected persons would be $48.50 for NFPA 101, $38.75 for NFPA 13, and $51.50 for NFPA 70 depending on the standard used or needed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to businesses from the proposed amendments to this rule.

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

Public Safety
Fire Marshal
Suite 302
5272 South College Drive
Murray, UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent R. Halladay at the above address, by phone at (801) 284-6350, by FAX at (801) 284-6351, or by Internet E-mail at bhallada@dps.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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Brent R. Halladay, Chief Deputy State Fire Marshal

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R710. Public Safety, Fire Marshal.
R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.
R710-4-1. Adoption of Fire Codes.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used, or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or institution, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), [~~1997~~]2000 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter [~~12~~]18 - New Health Care Occupancies; Chapter [~~13~~]19 - Existing Health Care Occupancies; Chapter [~~14~~]22 - New Detention and Correctional Occupancies; Chapter [~~15~~]23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only.

1.2 National Fire Protection Association (NFPA), Standard 13, Installation of Sprinkler Systems, [~~1996~~]1999 edition, except as amended by provisions listed in R710-4-3, et seq.

1.3 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 1996 edition, except as amended by provisions listed in R710-4-3, et seq.

1.4 National Fire Protection Association (NFPA), Standard 70, National Electric Code (NEC), [~~1996~~]1999 edition, as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.5 Uniform Building Code (UBC), Volume 1, 1997 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

The following UBC appendix chapter is adopted:

Chapter 3 - Division IV, Requirements for Group R, Division 4 Occupancies.

1.6 Uniform Fire Code (UFC), Volume 1, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-4-3, et seq.

The following UFC appendix chapters are adopted:

(a) Appendix I-C Stairway Identification.

(b) Appendix III-C Inspection, Testing and Maintenance of Water Based Fire Protection Systems.

(c) Appendix IV-A Interior Floor Finish.

(d) Appendix VI-A Hazardous Materials Classifications.

(e) Appendix VI-E Reference Tables from the Uniform Building Code.

1.7 Uniform Fire Code Standards (UFCS), Volume 2, 1997 edition, as published by the International Fire Code Institute (IFCI).

The following UFCS standards are amended as follows:

(a) UFCS 10-1, Selection, Installation, Inspection, Maintenance and Testing of Portable Fire Extinguishers is amended to adopt NFPA, Standard 10, 1998 edition.

(b) UFCS 10-2, Installation, Maintenance and Use of Fire Protection Signaling Systems is amended to adopt NFPA, Standard 72, 1996 edition.

(c) UFCS 52-1, Compressed Natural Gas (CNG) Vehicular Fuel Systems is amended to adopt NFPA, Standard 52, 1995 edition.

(d) UFCS 79-1, Foam Fire Protection Systems is amended to adopt NFPA, Standard 11, 1994 edition.

(e) UFCS 82-1, Liquefied Petroleum Gas Storage is amended to adopt NFPA, Standard 58, 1995 edition.

1.8 International Mechanical Code (IMC), 1998 edition, a copyrighted work owned by the International Code Council, Inc., and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.9 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

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KEY: fire prevention, public buildings
[~~August 16, 2000~~]January 16, 2001 53-7-204
Notice of Continuation June 19, 1997

Public Safety, Fire Marshal
R710-6
Liquefied Petroleum Gas Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23367
FILED: 12/01/2000, 12:15
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Liquefied Petroleum Gas Board proposes to amend the currently enacted Rule R710-6, by updating one National Fire Protection Association (NFPA) standard as an incorporated reference.

SUMMARY OF THE RULE OR CHANGE: On November 17, 2000, the Utah Liquefied Petroleum Gas Board met and addressed one change to the currently adopted Rule R710-6. In Section R710-6-1.2, the Board proposes to update the currently adopted incorporated reference, National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 1996 edition to the 1999 edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-305

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 1999 edition.

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There will be a cost to the state budget to reprint the changed Rule, R710-6, and redistribute this rule to those who are affected by the rule change. There would also be the cost of purchasing the newly adopted NFPA standard at a cost of $29.75 each. The aggregate cost would be estimated at approximately $500.

❖LOCAL GOVERNMENTS: There is no anticipated aggregate cost or savings to local government unless the local government agency wished to have a copy of the newly adopted standard for reference.

❖OTHER PERSONS: The anticipated aggregate cost to other persons would depend on the number of persons that would wish to purchase the above stated NFPA standard for their reference. The total anticipated cost cannot be estimated due to the unknown number of NFPA standards that would be purchased.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost to the state budget would be approximately $500 to print the new rule, send it to all affected by the changes, and purchase copies of the NFPA standard to use. The compliance cost for affected persons would be $29.75 for each standard if desired to be purchased for reference.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to businesses from the proposed amendment to this rule.

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

Public Safety
Fire Marshal
Suite 302
5272 South College Drive
Murray, UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent R. Halladay at the above address, by phone at (801) 284-6350, by FAX at (801) 284-6351, or by Internet E-mail at bhallada@dps.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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Brent R. Halladay, Chief Deputy State Fire Marshal

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R710. Public Safety, Fire Marshal.
R710-6. Liquefied Petroleum Gas Rules.
R710-6-1. Adoption, Title, Purpose and Scope.

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 1998 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, [~~1996~~]1999 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 501C, Standard on Recreational Vehicles, 1996 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 Uniform Fire Code (UFC), Volume 1, Article 82, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-6-8, et seq.

1.5 Uniform Fire Code (UFC), Volume 2, Uniform Fire Code Standards (UFCS), No. 82-1 and No. 82-2, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-6-8, et seq.

1.6 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.7 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.8 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.9 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

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KEY: liquefied petroleum gas
[~~February 1, 2000~~]January 16, 2001 53-7-305
Notice of Continuation October 25, 1996

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Public Safety, Fire Marshal
R710-9
Rules Pursuant to the Utah Fire Prevention Law

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23340
FILED: 11/28/2000, 14:15
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board proposes to amend the currently enacted rule, R710-9, by adding the adoption of the National Fire Protection Association (NFPA), Standard 160, Standard for Flame Effects Before an Audience, 1998 edition, as an incorporated reference, and making some other minor procedural changes to the currently adopted rule.

SUMMARY OF THE RULE OR CHANGE: On November 2, 2000, the Utah Fire Prevention Board met and addressed the following proposed changes: In Section R710-9-3.3, the Board proposes to adopt the National Fire Protection Association (NFPA), Standard 160, Standard for Flame Effects Before an Audience, 1998 edition, as an incorporated reference. With the continued usage and substantial increase of flame effects in various indoor shows, the Board felt it necessary to adopt a recognized standard to provide guidance to public safety officials and operators of flame effects on a statewide basis; and, In Section R710-9-3, some other minor procedural changes were made to this section to bring clarity to the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Fire Protection Association (NFPA), Standard 160, Flame Effects Before an Audience, 1998 edition.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There will be a cost to the state budget to reprint the changed rule, R710-9, and redistribute this rule to those who are affected by the rule change. There would also be the cost of purchasing the newly adopted NFPA, Standard 160, at a cost $20.25 per standard. The aggregate cost would be estimated at approximately $500.
❖LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government unless the local government agency wished to have a copy of the newly adopted standard at a cost of $20.25 per standard.
❖OTHER PERSONS: The anticipated cost to others persons would depend on the number of persons that would wish to purchase NFPA, Standard 160 at the cost of $20.25 per standard. The total anticipated aggregate cost cannot be estimated due to the unknown number of NFPA standards that would be purchased.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost to the state budget would be approximately $500 to print the new rule, send it to all affected by the changes, and purchase copies of the NFPA standard to use. The compliance cost for affected persons would be $20.25 per standard to purchase the standard for reference when using flame effects before an audience.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business that will result from this rule amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Public Safety
Fire Marshal
Suite 302
5272 South College Drive
Murray, UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent R. Halladay at the above address, by phone at (801) 284-6350, by FAX at (801) 284-6351, or by Internet E-mail at bhallada@dps.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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Brent R. Halladay, Chief Deputy State Fire Marshal

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R710. Public Safety, Fire Marshal.
R710-9. Rules Pursuant to the Utah Fire Prevention Law.

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R710-9-2. Definitions.

2.1 "Academy" means Utah Fire and Rescue Academy.

2.2 "Academy Director" means the Director of the Utah Fire and Rescue Academy.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Certification Council" means Utah Fire Service Certification Council.

2.5 "Division" means State Fire Marshal.

2.6 "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.

2.7 "LFA" means Local Fire Authority.

2.8 "Liaison" means Fire Academy Liaison.

2.9 "NFPA" means National Fire Protection Association.

2.10 "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.

2.11 "Plan" means Fire Academy Strategic Plan.

2.12 "SFM" means State Fire Marshal.

2.13 "Standards Council" means Fire Service Standards and Training Council.

2.14 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee.

2.15 "UCA" means Utah Code Annotated, 1953.

2,16 "UFC" means Uniform Fire Code.

2.17 "UFCS" means Uniform Fire Code Standards.

R710-9-3. Specific Editions of the Fire Code and Standards.

3.1 The Uniform Fire Code (UFC), Volume 1, 1997 edition, excluding appendices, as promulgated by the International Fire Code Institute, is hereby adopted and incorporated by reference as the state fire code, for the safeguarding of life and property from the hazards of fire and explosion, except as amended by provisions listed in R710-9-6, et seq.

3.2 The Uniform Fire Code Standards (UFCS), Volume 2, 1997 edition, as promulgated by the International Fire Code Institute, is hereby adopted and incorporated by reference, as a set of standards that are specifically referred to within various sections of the UFC. The following Uniform Fire Code Standards are amended as follows:

a. Uniform Fire Code Standard 10-1, Selection, Installation, Inspection, Maintenance and Testing of Portable Fire Extinguishers is amended to adopt NFPA, Standard 10, Standard for Portable Fire Extinguishers, 1998 edition, except as amended by provisions listed in R710-9-6, et seq.

b. Uniform Fire Code Standard 10-2, Installation, Maintenance and Use of Fire Protection Signaling Systems is amended to adopt NFPA, Standard 72, National Fire Alarm Code, 1996 edition.

c. Uniform Fire Code Standard 52-1, Compressed Natural Gas (CNG) Vehicular Fuel Systems is amended to adopt NFPA, Standard 52, Compressed Natural Gas (CNG) Vehicular Fuel Systems Code, 1995 edition.

d. Uniform Fire Code Standard 79-1, Foam Fire-Protection Systems is amended to adopt NFPA, Standard 11, Low Expansion Foam, 1994 edition.

e. Uniform Fire Code Standard 82-1, Liquefied Petroleum Gas Storage and Use is amended to adopt NFPA, Standard 58, LP Gas Code, [~~1995~~]1998 edition, except as amended by provisions listed in R710-9-6, et seq.

3.3 National Fire Protection Association (NFPA), Standard 160, Standard for Flame Effects Before an Audience, 1998 edition, except as amended by provisions listed in R710-9-6, et seq.

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KEY: fire prevention, law
[~~September 1, 1999~~]January 16, 2001 **53-7-204**
Notice of Continuation June 19, 1997

Public Service Commission, Administration
R746-200
Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23353
FILED: 11/30/2000, 18:23
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To revise the procedures for informal review and mediation of service complaints; and provide consistent dispute resolution procedures identified in Rule R746-200 and Rule R746-240.

SUMMARY OF THE RULE OR CHANGE: The amendment describes the informal review procedures to be followed by the complainant, the service provider and the Division of Public Utilities in attempting to resolve customer complaints. The amendment also makes word changes to obtain consistency in the informal review procedures specified in Rules R746-200 and R746-240.
(**DAR Note:** The proposed amendment to R746-240 is under DAR No. 23354 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 54-3-1, 54-3-7, 54-4-1, 54-4-7, and 54-7-9

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--This change does not require the state to make any financial expenditure changes. The effected agencies will perform the same activities they are currently doing, albeit in a different sequence.
❖LOCAL GOVERNMENTS: None--This change does not require local government to make any changes.
❖OTHER PERSONS: Estimated to be none. The complaining customer and service provider are already making efforts to resolve complaints under existing rule provisions and provide information to the regulatory agencies on their activities. The amendments provide time frames for reporting the complaint process activities and results.
COMPLIANCE COSTS FOR AFFECTED PERSONS: It is not anticipated that the rule change will require the expenditure of any additional funds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change is being made to remove existing rule language which technically required the Division of Public Utilities to perform activities prior to a time period in which complaints could likely be resolved. The rule change now identifies a procedural process in which most complaints may be resolved and then provides for the Division of Public Utilities to attempt to mediate unresolved complaints. Complaint resolution is an activity in which all service providers are already engaged and which is currently covered by existing rule language. The procedural changes are not anticipated to require the expenditure of any additional funds.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Public Service Commission
Administration
Fourth Floor, Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Barbara Stroud at the above address, by phone at (801) 530-6716, by FAX at (801) 530-6796, or by Internet E-mail at bstroud@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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Barbara Stroud, (Designee) Paralegal

R746. Public Service Commission, Administration.
R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.
R746-200-7. Informal Review.

A. [~~Subject to Subsection R746-100-3(F)(1), Consumer Complaints, a~~]A person who is unable to[~~cannot~~] resolve a dispute with the utility concerning a matter subject to Public Service Commission jurisdiction[~~addressed in these rules~~] may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. Upon receipt of a request for informal

review, the Division employee shall, within one business day, notify the utility that an informal complaint has been filed. Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In no circumstances shall the utility fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the utility's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The utility shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the utility request that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The utility shall inform the Division employee of the utility's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the utility, the complaint shall be presumed to be unresolved.

B. Mediation –- If the utility or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the date of the mediation request, and so advise the mediation-requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the utility's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the utility. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation –- The utility and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint, within five business days of the Division's request, if reasonably possible or as expeditiously as possible, if they cannot be provided within five business days.

D. Commission Review –- If the utility has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, [~~T~~]the Division [~~of Public Utilities~~]in all cases shall inform the [~~consumer~~]complainant of [~~his~~]the right to petition the Commission for a[~~formal~~] review of the dispute, and shall make available to the [~~consumer~~]complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a[~~n account holder~~] complainant is proceeding with an informal or a formal review or mediation by the Division or a Commission review of a dispute, no termination of service shall be permitted, [~~provided~~]if any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-6(F), Termination of Service Without Notice.

R746-200-8. Formal Agency Proceedings Based Upon Complaint Review.

[~~A.~~]The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

KEY: public utilities, rules, utility service shutoff*
[~~June 1, 1999~~]2001 **54-4-1**
Notice of Continuation December 8, 1997 **54-4-7**
54-7-9
54-7-25

Public Service Commission, Administration
R746-240
Telecommunication Service Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23354
FILED: 11/30/2000, 18:23
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To reflect statutory changes which have added to the telecommunication service issues which must be resolved by the Public Service Commission; establish the procedures for informal review and mediation of service complaints; and provide consistent dispute resolution procedures identified in Rule R746-200 and Rule R746-240.

SUMMARY OF THE RULE OR CHANGE: The amendment describes the informal review procedures to be followed by the complainant, the service provider and the Division of Public Utilities in attempting to resolve customer complaints. The amendment also makes word changes to obtain consistency in the informal review procedures specified in Rules R746-200 and R746-240.
(**DAR Note:** The proposed amendment to R746-200 is under DAR No. 23353 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 54-8b-18, 54-4-37, 54-3-1, 54-3-7, 54-4-1, 54-4-7, and 54-7-9

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--This change does not require the state to make any financial expenditure changes. The effected agencies will perform the same activities they are currently doing, albeit in a different sequence.
❖LOCAL GOVERNMENTS: None--This change does not require local government to make any changes.
❖OTHER PERSONS: Estimated to be none. The complaining customer and service provider are already making efforts to resolve complaints under existing rule provisions and provide information to the regulatory agencies on their activities. The amendments provide time frames for reporting the complaint process activities and results.
COMPLIANCE COSTS FOR AFFECTED PERSONS: It is not anticipated that the rule change will require the expenditure of any additional funds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change is being made to remove existing rule language which technically required the Division of Public Utilities to perform activities prior to a time period in which complaints could likely be resolved. The rule change now identifies a procedural process in which most complaints may be resolved and then provides for the Division of Public Utilities to attempt to mediate unresolved complaints. Complaint resolution is an activity in which all service providers are already engaged and which is currently covered by existing rule language. The procedural changes are not anticipated to require the expenditure of any additional funds.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Public Service Commission
Administration
Fourth Floor, Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Barbara Stroud at the above address, by phone at (801) 530-6716, by FAX at (801) 530-6796, or by Internet E-mail at bstroud@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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Barbara Stroud, (Designee) Paralegal

R746. Public Service Commission, Administration.
R746-240. Telecommunication Service Rules.
R746-240-1. General Provisions.

A. Authorization--The Utah Public Utility Code Sections 54-1-1, 54-4-4, 54-4-7, 54-4-8, and 54-4-14.

B. Title--These rules shall be known and may be cited as the Utah Service Rules for Telecommunication Corporations.

C. Purpose--The purpose of these rules is to establish and enforce uniform [~~utility~~]telecommunications service practices and procedures governing eligibility, deposits, account billing, termination and deferred payment agreements.

D. Objective--The objective of these rules is to assure the adequate provision of residential and business [~~utility~~]telecommunications service, to restrict unreasonable termination of or refusal to provide residential and business [~~utility~~]telecommunications service, to provide functional alternatives to termination or refusal to provide residential or business [~~utility~~]telecommunications service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination and deferred payment agreements.

E. Nondiscrimination--[~~Utility~~]Telecommunications service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

F. Requirement of Good Faith--Every agreement or obligation within these rules imposes an obligation of good faith, honest, and fair dealings in its performance and enforcement.

G. Application of Rules--These telecommunications service rules shall apply to each [~~local exchange carrier~~]telecommunications corporation operating within Utah under the jurisdiction of the Public Service Commission.

1. A [~~local exchange carrier~~]telecommunications corporation may petition the Commission for an exemption from specified portions of these rules in accordance with R746-100-16, Deviation from Rules.

2. The adoption of these rules by the Commission shall in no way preclude it from altering or amending a specific rule pursuant to applicable statutory procedures.

H. Customer's Statement of Rights and Responsibilities--When [~~utility~~]telecommunications service is extended to an account holder, and annually thereafter, a local exchange carrier shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Public Service Commission. This statement shall be a single page document. It shall be prominently displayed in each customer service center.

R746-240-2. General Definitions.

A. "Account Holder"--A person, corporation, partnership, or other entity which has agreed with a [~~local exchange carrier~~]telecommunications corporation to pay for receipt of [~~utility~~]telecommunications services and to which the utility provides the [~~utility~~]telecommunications services.

B. "Applicant"--A person, corporation, partnership, or other entity that applies to a [~~local exchange carrier~~]telecommunications corporation for local access line services.

C. "Local Exchange Carrier/LEC"--A [~~telephone utility~~]telecommunications corporation that provides the local access line services within the geographic territory authorized by the Commission.

D. "Deferred Payment Agreement"--An agreement to receive or to continue to receive [~~utility~~]telecommunications service pursuant to Section R746-240-5, Deferred Payment Agreement, and to pay an outstanding debt or delinquent account owed to a [~~local exchange carrier~~]telecommunications corporation.

R746-240-3. Deposits and Eligibility for Service.

A. Deposits and Guarantees--

1. [~~Local exchange carriers~~]Telecommunications corporations shall have Commission approved tariffs on file relating to their security deposits and third party guarantor polices and procedures.

2. Simple interest shall accrue on a deposit and shall be paid at the time the deposit is either refunded or applied to the customer's final bill for service. The interest rate used by a [~~utility~~]telecommunications corporation shall be set by the Commission.

B. Eligibility for Service--

1. [~~Utility~~]Telecommunications service is to be conditioned upon payment of deposits, when required, and of the outstanding debts for past [~~utility~~]telecommunications service which are owed by the applicant to that [~~local exchange carrier~~]telecommunications corporation, subject to Section R746-240-7 [~~Informal~~] Review and Resolution of Disputes, and Section R746-240-8, Formal Agency Proceedings Based Upon Complaint Review. That service may be denied when unsafe conditions exist, when the applicant has given false information in applying for [~~utility~~]telecommunications service, or when the applicant has tampered with the [~~utility's~~]telecommunications corporation's lines, equipment, or other properties.

2. When an applicant is unable to pay an outstanding debt in full, service may be provided upon execution of a deferred payment agreement as set forth in Section R746-240-5, Deferred Payment Agreement.

3. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, previously terminated for non-payment, and the applicant and the delinquent account holder received the [~~utility's~~]telecommunications corporation's service, whether the service was received at the applicant's present address or another address.

R746-240-4. Account Billing.

A. Billing Procedures--

1. Bills to account holders for [~~utility~~]telecommunications services shall be issued on a monthly basis and shall be typed or machine printed.

B. Periodic Billing Statement--

1. Except in the case of [~~utility~~]telecommunications service which is deemed to be uncollectible or with respect to which collection or termination procedures have been instituted, a [~~local exchange carrier~~]telecommunications corporation shall mail or deliver to the account holder, for each billing cycle at the end of which there is an outstanding balance for current service, a statement which the account holder may retain, setting forth each of the following disclosures to the extent applicable:

a. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";

b. the amount of the charges debited to the account during the current billing cycle using a term such as "current service";

c. the amount of the payments made to the account from the previous billing cycle using a term, such as "payments";

d. the amount of the late payment charges debited to the account during the current billing cycle using a term, such as "late charge";

e. a listing of the closing date of the current billing cycle and the outstanding balance in the account on that date using a term, such as "amount due";

f. a listing of the statement, or payment, due date;

g. a listing of the date by which payment of the new balance must be made to avoid assessment of a late charge;

h. a statement that a late charge, expressed in annual percentage rate or periodic rate, may be assessed against the account for late payment;

i. a statement such as: "If you have questions about this bill, please call the company at--phone #".

C. Late Charge--

1. A late payment charge of a periodic rate as established by the Commission may be assessed against an unpaid balance pursuant to specific tariffs approved by the Commission. Late payment charges shall not apply if payment is made before the next bill is rendered by the [~~local exchange carrier~~]telecommunications corporation.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This subsection does not apply to reconnection charges or return check service charges.

D. Statement Due Date--An account holder shall have not less than 20 days from the bill date to pay the new balance, which date shall be the statement due date.

E. Disputed Bill--

1. In the event of a dispute between the account holder and the [~~local exchange carrier~~]telecommunications corporation respecting a bill, the [~~local exchange carrier~~]telecommunications corporation may require the account holder to pay the undisputed portion of the bill to avoid discontinuance of service for nonpayment. The [~~local exchange carrier~~]telecommunications corporation shall make an investigation as may be appropriate to the particular case, and report the result thereof to the account holder. In the event the dispute is not reconciled, the [~~local exchange carrier~~]telecommunications corporation shall advise the account holder that he may make application to the Division of Public Utilities for review and disposition of the matter per Section R746-240-7, [~~Informal~~]Review and Resolution of Disputes.

2. Inaccurately billed service--When the billings for [~~utility~~]telecommunications services have not been accurately determined because of the [~~local exchange carrier's~~]telecommunications corporation's omission or negligence, the [~~local exchange carrier~~]telecommunications corporation shall offer and enter into reasonable payment arrangements when the amount owed by the customer exceeds $25 and when the period over which the underbilling accumulated exceeds one month. When a[~~n local exchange carrier~~] telecommunications corporation overbills a customer for [~~utility~~]telecommunications service, the [~~local exchange carrier~~]telecommunications corporation shall offer the account holder a credit on future bills or a refund if requested by the account holder.

3. Interruption of service--In the event the account holder's service is interrupted, other than by the negligence or the willful act of the account holder, and it remains out of service for a specified number of hours, after being reported or found by the

[~~utility~~]telecommunications corporation to be out of order, credit adjustments shall be made to the account holder's billing. The specified number of hours, which can be either 24 or 48, and the adjustment methods will be as shown in the tariffs of each [~~local exchange carrier~~]telecommunications corporation and approved by the Commission.

R746-240-5. Deferred Payment Agreement.

A. Delinquent Account--

1. An account holder who is unable to pay a delinquent account balance on demand may be able to receive [~~utility~~]telecommunications services under a deferred payment agreement, if such an agreement is offered by the LEC.

2. When a [~~local exchange carrier~~]telecommunications corporation offers a form of a deferred payment agreement, the account holder can prevent disconnection, or be reconnected, by negotiating and executing a deferred payment agreement and paying the first installment at the [~~local exchange carrier~~]telecommunications corporation's business office. Within two working days after the account holder makes the first installment payment, [~~utility~~]telecommunications service will be reconnected.

3. After negotiating a deferred payment agreement, the account holder shall pay the current bills for service plus the monthly installment necessary to liquidate the delinquent bill.

4. A deferred payment agreement may include a late payment charge as authorized for the [~~local exchange carrier~~]telecommunications corporation by the Commission.

B. Breach--If an account holder breaches a condition or term of a deferred payment agreement, the [~~local exchange carrier~~]telecommunications corporation may treat that breach as a delinquent account and shall have the right to terminate service without further notice.

R746-240-6. Termination.

A. Delinquent Account--

1. A service bill which has remained unpaid beyond the statement due date is a delinquent account. A[~~n local exchange carrier~~] telecommunications corporation shall not consider an account holder's bill past due unless it remains unpaid for a period of 20 calendar days after the billing date printed on the bill.

2. When an account is delinquent, the [~~local exchange carrier~~]telecommunications corporation, before termination, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. a statement that the account is a delinquent account and should be paid promptly;

b. a statement that the account holder should communicate with the [~~local exchange carrier~~]telecommunications corporation's collection department, by calling the company, if the account holder has questions concerning the account;

c. a statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice, the [~~local exchange carrier~~]telecommunications corporation's collections personnel shall investigate any disputed issue and shall attempt to resolve that issue by negotiation. If the dispute is not resolved, the [~~local exchange carrier~~]telecommunications corporation's collection personnel shall inform the account holder that he may make application to the Division of Public Utilities for a review and disposition pursuant to Section R746-240-7, [~~Informal~~]Review and Resolution of Disputes. During this investigation and negotiation and a subsequent review by the Division of Public Utilities no other action shall be taken to terminate the local access service if the account holder pays the undisputed portion of the account, subject to the [~~local exchange carrier~~]telecommunications corporation's right to terminate service pursuant to R746-240-6(D), Termination Without Notice.

B. Reasons for Termination--

1. Service may be terminated by a[~~n local exchange carrier~~] telecommunications corporation for the following reasons[~~:~~]:

a. nonpayment of billed and delinquent charges, deposits, deferred payments owed to the [~~local exchange carrier~~]telecommunications corporation;

b. abusive use of the telephone services in a manner that interferes with the service of another person;

c. intentionally using the service in a manner that causes wrongful billing charges to another person;

d. intentionally using the service to transmit messages or to locate a person to give or obtain information, without payment of appropriate message charges;

e. using the service with fraudulent intent by impersonating someone else;

f. using the service for unlawful purposes;

g. tampering with or destroying company lines, equipment or other properties;

h. subterfuge or deliberately furnishing false information when applying for and obtaining telephone services;

i. abandonment of the service.

2. The following shall be insufficient grounds for termination of service:

a. a delinquent account, accrued prior to the commencement of a divorce or separate maintenance action in the courts, in the name of a former spouse;

b. cohabitation of a current account holder with one who is a delinquent account holder who was previously terminated for non-payment, unless the current and delinquent account holders also cohabited during the time the delinquent account holder received the [~~utility~~]telecommunications corporation's service, whether such service was received at the current account holder's present address or another address;

c. when the delinquent account balance is $15.00, or less, except when a delinquent balance has accrued for more than 3 months.

d. delinquency in payment for service by a previous occupant at the premises to be served other than a member of the same family or household;

e. failure to pay any amount in a bona fide dispute before the Division or Commission.

C. Medical Emergency/Medical Facilities--

1. A local exchange carrier shall postpone discontinuance of service of a residential customer for 30 days from the date of a certificate of a licensed physician which states that discontinuance of service will aggravate an existing medical emergency or create a medical emergency for the customer, a member of his family, or other permanent resident on the premises where service is rendered.

This postponement shall be limited to a single 30-day period or a lesser period as may be agreed upon by the [~~local exchange carrier~~]telecommunications corporation and the account holder. A person whose health is threatened or illness aggravated may petition the Commission for an extension of time.

2. The notice or certificate of medical emergency must be in writing and show clearly the name of the person whose illness would be exacerbated by discontinuance of service, the nature of the medical emergency, the specific manner in which the discontinuance of service will aggravate or create a medical emergency, and the name, title, and signature of the physician certifying the medical emergency.

3. In instances when discontinuance of service is delayed for medical reasons, the [~~utility~~]telecommunications corporation may restrict the ability of the account holder to place toll calls. The account holder shall pay the appropriate rates for toll restriction service.

D. Termination Without Notice--A[~~n local exchange carrier~~] telecommunications corporation may terminate local access without notice when, in its judgment, a clear emergency or serious health or safety hazard exists, or when there is unauthorized use of or diversion of a[~~n local exchange carrier~~] telecommunications corporation service or tampering with lines, or other property owned by the [~~local exchange carrier~~]telecommunications corporation. The [~~local exchange carrier~~]telecommunications corporation shall notify the account holder of the reason for the termination of service.

E. Notice of Proposed Termination--The account holder shall be notified in writing of the [~~local exchange carrier~~]telecommunications corporation's intention to discontinue service and be allowed no less than seven days from the mailing date to respond to the notice. Notices of proposed discontinuance of service shall state:

1. the reasons for and date of scheduled discontinuance of service;

2. actions which the account holder may take to avoid discontinuance of service;

3. a statement of the customer's rights and responsibilities under existing state law and Commission rules.

F. Effort to Contact the Account Holder--

1. On the business day prior to actual discontinuance of [~~local exchange~~]telecommunications service, a representative of the [~~local exchange carrier~~]telecommunications corporation shall make a reasonable effort to contact the account holder affected, either in person or by telephone, to apprise the account holder of the proposed action and steps to take to avoid or delay discontinuance. This oral notice shall include the same information required for written notice. Each local exchange carrier shall maintain clear, written records of these oral notices, showing dates and names of employees giving the notices.

2. The [~~local exchange carrier~~]telecommunications corporation shall make reasonable efforts to personally contact a third party designated by the residential account holder before termination occurs, if the third party resides within its service area. The [~~local exchange carrier~~]telecommunications corporation shall inform its account holders of the third party notification procedure in its statement of customer rights and responsibilities.

G. Termination--Upon expiration of the notice of proposed termination, the [~~local exchange carrier~~]telecommunications corporation may terminate service.

H. Account Holder Requested Termination--An account holder shall advise a[~~n local exchange carrier~~] telecommunications corporation at least three days in advance of the day on which he wants local access service disconnected. The [~~local exchange carrier~~]telecommunications corporation shall disconnect the service within one working day of the requested disconnect date. The account holder shall not be liable for services rendered to or at the address or location after 11:59 p.m. of the requested disconnect date.

R746-240-7. [~~Informal~~]Review and Resolution of Disputes.

A. Informal Review--A person who is unable to resolve a dispute with a[~~n local exchange carrier~~] telecommunications corporation concerning a matter subject to Public Service Commission jurisdiction[~~addressed in these regulations~~] may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the telecommunications corporation that an informal complaint has been filed. Absent unusual circumstances, the telecommunications corporation shall attempt to resolve the complaint within five business days. In no circumstance shall the telecommunications corporation fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the telecommunications corporation's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The telecommunications corporation shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the telecommunications corporation requests that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The telecommunications corporation shall inform the Division employee of the telecommunications corporation's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the reeipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the telecommunications corporations, the complaint shall be presumed to be unresolved.

B. Mediation--If the telecommunications corporation or the complainant determines that they cannot resolve the dispute by themselves, wither of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the otehr party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the date of the mediation request, and so advise the mediation requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be

unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the telecommunications corporation's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the telecommunications corporation. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation–The telecommunications corporation and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint within five business days of the Division's request, if reasonable possible or as expeditiously as possible if they cannot be provided within five business days.

D. Commission Review--If the telecommunications corporation has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, [~~The Division will investigate the dispute, make an attempt to resolve it, and inform both the local exchange carrier and the consumer of its findings within five business days, or propose a solution to the company and have the company advise the complainant of the solution within five business days from receipt of the informal review request. T~~]the Division in all cases shall inform the complainant of the[~~ir~~] right to petition the Commission for a[~~ formal~~] review of the dispute, and shall make available to the [~~consumer~~]complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a[~~n account holder~~]complainant is proceeding with an informal review or mediation by the Division or a Commission review of a dispute, no termination of [~~local access~~]telecommunications service shall be permitted, if amounts not disputed are paid when due, subject to the [~~local exchange carrier~~]telecommunications corporation's right to terminate service pursuant to R746-240-6(D), Termination Without Notice.

R746-240-8. Formal Agency Proceedings Based Upon Complaint Review.

The Commission, upon its own motion, the petition of the Division of Public Utilities, or any person, may initiate formal hearings or investigative proceedings upon a matter arising out of an informal complaint.[~~—While an account holder is proceeding with a formal review of a dispute, no termination of local access service shall be permitted, provided that amounts not disputed are paid when due, subject to the local exchange carrier's right to terminate service pursuant to R746-240-6(D), Termination Without Notice.~~

~~**R746-240-9. 976 Services.**~~

~~A. The costs of blocking for 976 calls, both the one-time and recurring costs, shall be borne in the rates charged by the local exchange carrier to the providers of the 976 service.~~

~~B. The following procedure should be followed by local exchange carriers in the handling of billing complaints regarding 976 charges.~~

~~1. Local exchange carrier service representatives shall explain the nature of the 976 charges and inform the customer of the manner in which the charges are incurred.~~

~~2. If the charges are disputed by the customer, the local exchange carrier will remove the disputed charges from the customer's telephone bill and advise the affected 976 sponsors of the adjustment.~~

~~3. Each customer that questions or disputes 976 charges will be advised by the local exchange carrier service representatives of the 976 Access Restriction Service, when the service is available.~~

~~4. The local exchange carrier shall continue to bill 976 charges separately from local service and long distance charges. The local exchange carrier shall also identify each 976 call by identifying the particular 976 program called by the customer.~~

~~5. The local exchange carrier shall not threaten disconnection or disconnect local service for failure to pay 976 charges.~~

~~6. The local exchange carrier is responsible for monitoring 976 service providers' ads and programs to see that the pricing information, as to the rates per minute, are properly stated and conform to the contracts and tariffs on file with the Commission.~~

]

KEY: procedure*, telecommunications, telephone
[~~March 14, 1997~~]2001 **54-4-1**
Notice of Continuation November 1, 1995 **54-4-7**
54-7-9

◆ ◆

End of the Notices of Proposed Rules Section

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 January 15, 2000. At its option, the agency may hold public hearings.

From the end of the waiting period through April 14, 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.

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

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 23164
FILED: 12/01/2000, 07:58
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed change was identified during the public review process for the original amendment. The Division has determined that the proposed change is necessary to effectively implement the rule.

SUMMARY OF THE RULE OR CHANGE: The original amendment allowed discharging domestic wastewater lagoons to apply for effluent discharge limits up to 45 mg/l (30-day average) and 65 mg/l (7-day average) for Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS), subject to criteria listed at Section R317-1-3.2.G. The proposed change would remove criteria 3.2.G.1. and 3.2.G.7 from the originally proposed amendment. This change will allow facility owners to apply for the new effluent limits without having to be out of compliance with their existing discharge permit.
(**DAR Note:** This change in proposed rule has been filed to make additional amendments to an amendment that was published in the October 1, 2000, issue of the *Utah State Bulletin*, on page 25. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

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

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The change in proposed rule not result in any increase costs or saving beyond those identified in the original amendment.
❖LOCAL GOVERNMENTS: The change in proposed rule not result in any increase costs or saving beyond those identified in the original amendment.
❖OTHER PERSONS: The change in proposed rule not result in any increase costs or saving beyond those identified in the original amendment.
COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change will not result in an increased cost for the regulated community.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change in proposed rule will not result in fiscal impacts to businesses beyond those identified in the original amendment.

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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Dianne R. Nielson, 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~~]1. The lagoon system is operating within the organic and hydraulic design capacity established by R317-3,

[~~3~~]2. The lagoon system is being properly operated and maintained,

[~~4~~]3. The treatment system is meeting all other permit limits,

[~~5~~]4. 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~~]5. 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*
[~~2000~~]2001 **19-5**
Notice of Continuation December 12, 1997

◆ ◆

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

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 23162
FILED: 11/30/2000, 12:21
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the public notice period for the original amendment, several minor changes were identified by staff. In addition several references in the original Environmental Protection Agency (EPA) rule were found to be in error. The change in proposed rule corrects these items.

SUMMARY OF THE RULE OR CHANGE: The remaining references to the 1994 versions of the Code of Federal Regulations (CFR) in Section R317-7-1 have been updated to refer to the 2000 version. Several references to 40 CFR Part 142 have been corrected to refer to 40 CFR Part 141. Section R317-7-1.9 was added in the original amendment, but is no longer required due to the above noted corrections made to Section R317-7-1.

(**DAR Note:** This change in proposed rule has been filed to make additional amendments to an amendment that was published in the October 1, 2000, issue of the *Utah State Bulletin*, on page 34. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

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

FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 136, 141, 144, 146, 148, 261, and 124; and 10 CFR 20

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 148, 261, 136, 124, and 141, July 1, 2000, ed.; and 10 CFR 20, January 1, 2000, ed.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The proposed changes are of an editorial nature and will not result in a change in costs or savings beyond the original amendment.
❖LOCAL GOVERNMENTS: The proposed changes are of an editorial nature and will not result in a change in costs or savings beyond the original amendment.
❖OTHER PERSONS: The proposed changes are of an editorial nature and will not result in a change in costs or savings beyond the original amendment.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed changes are of an editorial nature and will not result in a change in compliance costs beyond those identified in the original amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes are of an editorial nature and will not result in a fiscal impact on businesses beyond those identified in the original amendment.

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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Dianne R. Nielson, Director

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

• • • • • • • • • • •

R317-7-1. Incorporation By Reference.

1.1 40 C.F.R. 144.7, 144.13(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, 144.70, and 144.87, July 1, 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, 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~~]2000 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~~]2000 ed., is adopted and incorporated by reference.

1.5 40 C.F.R. Part [~~142~~]141, July 1, [~~1994~~]2000 ed., is adopted and incorporated by reference.

1.6 40 C.F.R. Part 136 Table 1B, July 1, [~~1994~~]2000 ed., is adopted and incorporated by reference.

1.7 10 C.F.R. Part 20 Appendix b, Table 11 Column 2, January 1, [~~1994~~]2000 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~~]2000 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.~~]

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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~~]141 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.

• • • • • • • • • • •

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~~]141 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 (d) and 144.23(c) as limited by the definition of Class IV wells in [~~s~~]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.

. . . . . .

KEY: water quality, underground injection control*
[~~2000~~]2001 **19-5**
Notice of Con[~~i~~]tinuation November 27, 1996

Environmental Quality, Water Quality
R317-8
Utah Pollutant Discharge Elimination System (UPDES)

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 23161
FILED: 12/01/2000, 08:07
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes are being made in response to comments received during the public comment period for the original amendment.

SUMMARY OF THE RULE OR CHANGE: In two locations, Subsections R317-8-3.9(6)(e)(1.b) and R317-8-4.2(18)(a), text which was inadvertently omitted during the original amendment process is being reinserted.
(**DAR Note:** This change in proposed rule has been filed to make additional amendments to an amendment that was published in the October 1, 2000, issue of the *Utah State Bulletin*, on page 40. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 19, Chapter 5
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 122 and 123

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The proposed changes are of an editorial nature and will not result in a change in costs or savings beyond the original amendment.
❖LOCAL GOVERNMENTS: The proposed changes are of an editorial nature and will not result in a change in costs or savings beyond the original amendment.
❖OTHER PERSONS: The proposed changes are of an editorial nature and will not result in a change in costs or savings beyond the original amendment.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed changes are of an editorial nature and will not result in a change in compliance costs beyond those identified in the original amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes are of an editorial nature and will not result in a fiscal impact on businesses beyond those identified in the original amendment.

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 01/15/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 01/16/2001

AUTHORIZED BY: Dianne R. Nielson, 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~~]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~~]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~~]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~~]ADMINISTRATION OF THE UPDES [~~Program~~]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~~]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:

• • • • • • • • • • •

1.6 [~~Definitions Applicable to Storm-water Discharges~~]DEFINITIONS APPLICABLE TO STORM-WATER DISCHARGES.

• • • • • • • • • • •

1.7 [~~Abbreviations and Acronyms~~]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~~]UPGRADE AND RECLASSIFICATION. Upgrading or reclassification of waters of the State by the Utah Water 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~~]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~~]INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE. The State adopts the following Federal standards and procedures, effective as of December 8, 1999, which are incorporated by reference:

• • • • • • • • • • •

R317-8-2. Scope and Applicability.

2.1 [~~Applicability of the~~]APPLICABILITY OF THE UPDES [~~Requirements~~]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 affects which may occur from toxic pollutants in sewage sludge.

• • • • • • • • • • •

2.2 [~~Prohibitions~~]PROHIBITIONS. No permit may be issued by the Executive Secretary:

• • • • • • • • • • •

2.3 [~~Variance Requests by Non-POTW's~~]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:

• • • • • • • • • • •

2.4 [~~Expedited Variance Procedures and Time Extensions~~]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.

• • • • • • • • • • •

2.5 [~~General Permits~~]GENERAL PERMITS

(1) Coverage. The Executive Secretary may issue a general permit in accordance with the following:

• • • • • • • • • • •

2.6 [~~Disposal of Pollutants into Wells, into POTWs or By Land Application~~]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.

• • • • • • • • • • •

2.7 [~~Variance Requests by POTWs~~]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:

• • • • • • • • • • •

2.8 [~~Decision on Variances~~]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:

• • • • • • • • • • •

R317-8-3. Application Requirements.

3.1 [~~Applying for a~~]APPLYING FOR A UPDES [~~Permit~~]PERMIT

(1) Application requirements

• • • • • • • • • • •

3.2 [~~Application Requirements for New Sources and New Discharges~~]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 R317-8-3.5 or new discharges of storm water associated with industrial activity which are subject to R317-8-3.9(2)(a) except as provided by R317-8-3.9(2)(a)2, shall provide the following information to the Executive Secretary, using application forms provided by the Executive Secretary:

• • • • • • • • • • •

3.3 [~~Confidentiality of Information~~]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 R317-8-3.1 may not be claimed as confidential.

(3) Information contained in UPDES permits may not be claimed as confidential.

3.4 [~~Signatories to Permit Applications and Reports~~]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 R317-8-3.9(3) 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."

3.5 [~~Application Requirements for Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers~~]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 R317-8-3.5. 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 R317-8-3.5(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 R317-8-3.9. 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 R317-8-3.9(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 R317-8-3.9(2)(a). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in R317-8-3.9 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 R317-8-3.5(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 R317-8-3.11 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 1 of R317-8-3.12 for the applicant's industrial category or categories unless the applicant qualifies as a small business under R317-8-3.5(8). Table II of R317-8-3.12 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 R317-8-3.12 (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 R317-8-3.12 (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 R317-8-3.12 (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 R317-8-3.5(8) is not required to analyze for pollutants listed in Table II of R317-8-3.12 (the organic toxic pollutants).

(e) Each applicant shall indicate whether it knows or has reason to believe that any of the pollutants in R317-8-3.12(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 (Ronnel); 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 R317-8-3.5(7)(c) and (d) to submit quantitative data for the pollutants listed in R317-8-3.12(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 R317-8-3.5(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.

3.6 [~~Concentrated Animal Feeding Operations~~]CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) Permit required. Concentrated animal feeding operations are point sources subject to the UPDES permit program.

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3.7 [~~Concentrated Aquatic Animal Production Facilities~~]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.

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3.8 [~~Aquaculture Projects~~]AQUACULTURE PROJECTS

(1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the UPDES permit program.

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3.9 [~~Storm Water Discharges~~]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 R317-8-3.9(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 R317-8-3.9(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 R317-8-3.9(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 permitin 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 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 R317-8-3.9(1)(a)5 and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph R317-8-3.9(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 R317-8-3.9(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 R317-8-3.5(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 O.1 inch rainfall) storm event (in hours);

f. Operators of a discharge which is composed entirely of storm water are exempt from R317-8-3.5(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 R317-8-3.9(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 R317-8-3.5(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 R317-8-3.2(3)(b) and (c) and 3.2(5).

2. An operator of an existing or new storm water discharge that is associated with industrial activity solely under R317-8-

3.9(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 R317-8-3.5 and R317-8-3.9(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 R317-8-3.9(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 R317-8-3.9(2)(a)2 to comply with R317-8-3.9(2)(a)1.

(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 R317-8-3.9(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 R317-8-3.9(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 R317-8-3.9(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 nonsupport 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 overlayed 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 R317-8-3.9(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 R317-8-3.9(3)(b)3. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under R317-8-3.9(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 R317-8-3.9(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 R317-8-3.5(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 R317-8-3.5(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 R317-8-3.9(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 R317-8-3.13, 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 R317-8-3.9(3)(b)2 or R317-8-3.9(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 R317-8-3.9(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 R317-8-3.9(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 R317-8-3.9(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 R317-8-3.9(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 R317-8-3.5(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 R317-8-3.9(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 R317-8-3.9(3)(a)4e, 3.9(3)(b)3b, and 3.9(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 R317-8-3.9(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 R317-8-3.9(1)(a) that does not have an effective UPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(a) 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 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 R317-8-3.9(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 R317-8-3.9(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, 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 describer 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 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. 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 R317-8-3.9(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 R317-8-3.9(6)(c) 1 through 7 or R317-8-3.9(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, 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;

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.

(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 consideration[**s**] of existing in-stream concentrations, 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(6)(d)10. and R317-8-3.9(6)(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)).

3.10 [~~Silvicultural Activities~~]SILVICULTURAL ACTIVITIES

(1) Permit requirements. Silvicultural point sources, as defined in this section, are point sources subject to the UPDES permit program.

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3.11 [~~Application Requirements for New and Existing POTWs.~~]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;

• • • • • • • • • • •

3.12 [~~Primary Industry Categories~~]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.

• • • • • • • • • • •

3.13 UPDES [~~Permit Application Testing Requirements~~]PERMIT APPLICATION TESTING REQUIREMENTS

TABLE I
Testing Requirements for Organic Toxic Pollutants
by Industrial Category for Existing Dischargers

	GC/MS fraction (1)			
Industrial category	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	(*)	(*)	(*)	(*)
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 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-chloroethylvinyl ether
11V	chloroform
12V	dichlorobromomethane
13V	dichlorodifluoromethane
14V	1,1-dichloroethane
15V	1,2-dichloroethane
16V	1,1-dichloroehtylene
17V	1,2-dichloropropane
18V	1,2-dichloropropylene
19V	ethylbenzene
20V	metyl bromide
21V	methyl chloride
22V	methoylene 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-dimethylphenol
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	benzidine
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-chloronaphthanlene
17B	4-chlorophenyl phenyl ether
18B	chrysene
19B	dibenxo(a,h)anthracene
20B	1,2-dichlorobenzen
21B	1,3-dichlorobenzene
22B	1,4-dichlorobenzene
23B	3,3-dichlorobenzidine
24B	diethyl phthalate
25B	dimethyl phtahalate
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-nitrosodi-n-propylamine
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. Acetaldhyde
2. Allyl alcohol
3. Allyl chloride
4. Amyl acetate
5. Aniline
6. Benzonitrile
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. Dicamba
22. Dichlobenil
23. Dichlone
24. 2,2-Dichloropropionic acid
25. Dichlorvos
26. Diethyl amine
27. Dimethyl amine
28. Dintrobenzene
29. Diquat
30. Disulfoton
31. Diuron
32. Epichloropydrin
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. Monoethyl amine
53. Monomethyl amine
54. Naled
55. Npathenic acid
56. Nitrotouene
57. Parathion
58. Phenolsulfanante
59. Phosgene
60. Propargite
61. Propylene oxide
62. Pyrethrins
63. Quinoline
64. Resorconol
65. Strontium
66. Strychnine
67. Styrene
68. 2,4,5-T(2,4,5-Trichlorophenoxy acetic acid)
69. TDE(Tetrachlorodiphenylethane)
70. 2,4,5-TP (2-(2,4,5 - trichlorophenoxy)propanic 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[~~−~~]4 [~~Application Requirements of R317-8-3.8(7)(e) Suspended for Certain Categories and Subcategories of Primary Industries~~]APPLICATION REQUIREMENTS OF R317-8-3.8(7)(E) SUSPENDED FOR CERTAIN CATEGORIES AND SUBCATEGORIES OF PRIMARY INDUSTRIES. The application requirements of R317-8-3.5 (7)(c) are suspended for the following categories and subcategories of the primary industries listed in R317-8-3.11:

. . . . . .

R317-8-4. Permit Conditions.

4.1 [~~Conditions Applicable to All UPDES Permits~~]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 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 R317-8-3.4. The Utah Water 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 R317-8-3.5(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 R317-8-3.5(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 R317-8-3.9(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:

1. The status of implementing the components of the storm water management program that are established as permit conditions;

2. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with R317-8-3.9(3)(b)3; and

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under R317-8-3.9(3)(b)4 and 3.9(3)(b)5;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs;

7. Identification of water quality improvements or degradation.

4.2 [~~Establishing Permit Conditions~~]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 R317-8-3.11, 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) Except as provided in paragrahs (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 a 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 inactivite 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 R317-8-8.10 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 R317-8-8.10. 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 program does not include one or more of the elements in this paragraph then the Executive Secretary must include those elements as conditions in the permit. A[~~n~~] 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~~]CALCULATING UPDES [~~Permit Conditions~~]PERMIT CONDITIONS. The following provisions will be used to calculate terms and conditions of the UPDES permit.

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4.4 [~~Stays of Contested Permit Conditions~~]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~~]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~~]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 recommencement 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~~]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~~]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~~]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~~]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 R317-8-7.7(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 R317-8-8.10 (or a modification thereto that has been approved in accordance with the procedures in R317-8-8.16 as enforceable conditions of the POTW's permits).

5.7 [~~Termination of Permit~~]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~~]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 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~~]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~~]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 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~~]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~~]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~~]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~~]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~~]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~~]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 or 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~~]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~~]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 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~~]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~~]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~~]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~~]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~~]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 l 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~~]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(l)(6) and may not include species whose presence of 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.

7.5 [~~Criteria and Standards for Best Management Practices~~]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 R317-8-7.5 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 R317-8-7.5(4)(b) alone or in combination with those required under R317-8-7.5(4)(a).

(d) In addition to the requirements of R317-8-7.5(4)(a) and (b), dischargers covered under R317-8-7.5(4) shall develop and implement a best management practices program in accordance with R317-8-7.5(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 R317-8-7.5(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 R317-8-7.5(5)(b), the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

7.6 [~~Toxic Pollutants~~]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-dichloroethan, 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 metabolities
(34) Ethylbenzene
(35) Enthylbenzene
(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) Nitrobenze
(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

7.7 [~~Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology~~]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 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 R317-8-3.4.

(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~~]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~~]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 R317-8-8.8 and 8.9 and which has been approved by the Executive Secretary in accordance with R317-8-8.10.

(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 R317-8-8.5.

(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 R317-8-8.3 for provisions applicable to this definition.

(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).

(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.

(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).

(10) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than a National Pretreatment Standard, imposed on an industrial user.

(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.

(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.

(13) "Significant Industrial User"

(a) Except as provided in R317-8-8.2(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 R317-8-8.11(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 R317-8-8.11(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.

(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.

8.3 [~~Provisions Applicable to Definitions~~]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 R317-8-8.3(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.

8.4 [~~Local Law~~]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.

8.5 [~~National Pretreatment Standards~~]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 R317-8-8.5(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 R317-8-8.5(1) and the specific prohibitions in R317-8-8.5(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 R317-8-8.5(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 R317-8-8.5(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, nonbiodegrable 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 R317-8-8.5(1) and R317-8-8.5(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 R317-8-8.5(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.

8.6 [~~National Pretreatment Standards~~]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).

8.7 [~~Removal Credits~~]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.

8.8 POTW [~~Pretreatment Programs~~]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 R317-8-8.8(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 R317-8-8.8(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 R317-8-8.8(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 R317-8-8.8(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 POTWs 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 R317-8-8.7.

(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 R317-8-8.11 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 R317-8-8.11 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 R317-8-8.8(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 R317-8-3.3.

(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 R317-8-8.8(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 R317-8-8.11.

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 R317-8-8.5 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 R317-8-8.11, 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 R317-8-8.8(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 R317-8-8.5(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 R317-8-8.8(1), the State may assume responsibility for implementing the POTW pretreatment program requirements set forth in R317-8-8.8(6) in lieu of requiring the POTW to develop a pretreatment program. However, this does not preclude POTW's from independently developing pretreatment programs.

8.9 [~~POTW Pretreatment Programs and/or Authorization to Revise Pretreatment Standards: Submission for Approval~~]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 R317-8-8.9(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 R317-8-8.10.

(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 R317-8-8.8. This statement shall:

1. Identify the provision of the legal authority under R317-8-8.8(6)(a) which provides the basis for each procedure under R317-8-8.8(6)(b);

2. Identify the manner in which the POTW will implement the program requirements set forth in R317-8-8.8 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 R317-8-8.9(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 R317-8-8.9(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 R317-8-8.10.

(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 R317-8-8.9(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 R317-8-8.9(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 R317-8-8.10(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.

8.10 [~~Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits~~]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 R317-8-8.9(2), and where removal credit authorization is sought with the requirements of R317-8-8.7 and 8.8.9(4) to review the submission. The Executive Secretary shall review the submission to determine compliance with the requirements of R317-8-8.8(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 R317-8-8.10(2) is extended beyond thirty (30) days or if a public hearing is held as provided for in R317-8-8.10(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 R317-8-8.9(2), and when a removal credit authorization is sought under R317-8-8.7 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 R317-8-8.10(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 R317-8-8.10(1) of this section, the Executive Secretary will approve or deny the submission based upon the evaluation in R317-8-8.10(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 R317-8-8.10(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 many 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~~]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 R317-8-8.6, 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 R317-8-8.11(2)(a), (b), (c), (d) and 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 R317-8-8.11(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 R317-8-8.11.

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 R317-8-8.7, the combined wastestream formula under R317-8-8.6,or by a fundamentally different factors variance under R317-8-8.15 at the time the user submits the report required by R317-8-8.11(2), the information required by R317-8-8.11(2)(f) and (g) shall pertain to the modified limits.

2. If the categorical pretreatment standard is modified by a removal allowance under R317-8-8.7, the combined wastestream formula under R317-8-8.6, or by a fundamentally different factors variance under R317-8-8.15 after the user submits the report required by R317-8-8.11(2) of this subsection, any necessary amendments to the information requested by R317-8-8.11(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 R317-8-8.11(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 R317-8-8.11(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 R317-8-8.6 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 R317-8-8.11(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 R317-8-8.6, 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 R317-8-8.6 the report required by R317-8-8.11(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 R317-8-11(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 R317-8-8.11(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 R317-8-8.11(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 R317-8-8.11(2), (4), (5), (8), (9), (12) and (13) shall be subject to the Utah Water 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 R317-8-8.11(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 R317-8-8.11(11). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of R317-8-8.11(2), (4), and (5).

2. Dischargers are exempt from the requirements of R317-8-8.11(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 R317-8-8.16(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.

8.12 [~~Confidentiality of Information~~]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.

8.13 [~~Net/Gross Calculation~~]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 R317-8-8.13(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.

8.14 [~~Upset Provision~~]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 R317-8-8.14(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.

8.15 [~~Bypass Provision~~]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 R317-8-8.15(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 R317-8-8.15(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 R317-8-8.15(4)(a).

8.16 [~~Modification of~~]MODIFICATION OF POTW [~~Pretreatment Programs~~]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 R317-8-8.10.

(2) Procedures. POTW pretreatment program modifications shall be accomplished as follows:

(a) For substantial modifications, as defined in R317-8-8.16(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 R317-8-8.16(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 R317-8-8.16(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 R317-8-8.16(3)(a), as substantial modifications.

(c) A modification that is not included in R317-8-8.16(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.

8.1[~~5~~]7 [~~Variances From Categorical Pretreatment Standards for Fundamentally Different Factors~~]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
[~~2000~~]2001 **19-5**
Notice of Continuation December 12, 1997 **19-5-104**
40 CFR 503

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End of the Notices of Changes in Proposed Rules Section

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (1996)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (• • • • •) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (1996); and *Utah Administrative Code* Section R15-4-8.

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-63
Medicaid Policy for Pharmacy Reimbursement

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 23346
FILED: 11/30/2000, 11:26
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This is a new rule. The purpose of the rule is to establish Medicaid pharmacy reimbursement criteria.

SUMMARY OF THE RULE OR CHANGE: The Medicaid Pharmacy Program reimbursement criteria will be established by rule. The current dispensing fee will be reduced by thirty cents for both rural and urban pharmacy providers effective September 15, 2000 to keep reimbursement within Legislative appropriations. The current payment of Average Wholesale Price minus 12% will remain the same.
(**DAR Note**: A corresponding proposed new rule is under DAR No. 23347 in this *Bulletin*. This emergency rule supersedes the emergency rule published in the September 15, 2000, *Bulletin* under DAR No. 23129 that was effective September 15, 2000.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5; and Title Chapter 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Department should realize a savings of approximately $700,000 annually.
❖LOCAL GOVERNMENTS: This rule does not apply to local government, so there is no budget impact.
❖OTHER PERSONS: Pharmacy providers will see a reduction in reimbursement of about $700,000 per year.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Pharmacy providers will see a thirty cent decrease in reimbursement for each prescription filled for a Medicaid recipient.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department has a $2,400,000 shortfall in funding to maintain the current level of pharmacy reimbursement. The Department originally proposed to alter pharmacy reimbursement by adjusting the payment based on the Average Wholesale Price (AWP). Currently pharmacists receive AWP minus 12%. To realize the necessary savings this would have been adjusted to AWP minus 15%. Negotiations with the pharmacy industry identified other savings that should reduce the shortfall to $700,000. Rather than making the cut by adjusting the payment to AWP minus 13%, those in the negotiations felt that a $.30 reduction in the dispensing fee was preferable. These issues will be carefully evaluated after the public comment period. A commitment was made to the pharmacy representatives that the $.30 dispensing fee reduction would be restored if they identified other cost saving initiatives that would produce comparable savings. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements.

Pharmacists receive a dispensing fee and a payment based on a discount from the Average Wholesale Price (AWP). Through negotiations with representatives of the pharmacy industry, it was agreed that a decrease in the dispensing fee was preferable to an increase in the discount taken from the AWP. A reduction in the dispensing fee is necessary to offset the rapid escalation of drug prices in the pharmacy program.

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
RaeDell Ashley at the above address, by phone at (801) 538-6495, by FAX at (801) 538-6099, or by Internet E-mail at rashley@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 12/01/2000

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-63. Medicaid Policy for Pharmacy Reimbursement.
R414-63-1. Introduction and Authority.

(1) The Medicaid Policy for reimbursement of dispensing fees for pharmacy providers was achieved through negotiations with representatives of the pharmacy industry.

(2) This rule is authorized under Chapter 26-18.

R414-63-2. Pharmacy Reimbursement.

For each prescription filled for a Medicaid recipient the pharmacy provider shall receive:

(1) the average wholesale price for the medication minus 12%; and

(2) a dispensing fee in the amount of $3.60 for urban providers and $4.10 for rural providers. This amount reflects a reduction of thirty cents for both urban and rural providers when this rule takes effect.

R414-63-3. Periodic Evaluation of Reimbursement.

(1) This decrease to the dispensing fee may be adjusted if other areas can be identified in the pharmacy program where significant cost saving measures can be implemented.

(2) The Department shall periodically evaluate reimbursement to pharmacy providers and make adjustments to reimbursement as appropriate.

KEY: medicaid
December 1, 2000 **26-18**

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Health, Health Care Financing, Coverage and Reimbursement Policy
R414-309
Utah Medical Assistance Program (UMAP) General Eligibility Requirements

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 23348
FILED: 11/30/2000, 11:26
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The funding for Utah Medical Assistance Program (UMAP) is inadequate to sustain it at its current level. The intent of the rule is to reduce the number of eligible individuals.

SUMMARY OF THE RULE OR CHANGE: The requirements for individuals to gain UMAP eligibility are tightened and made more restrictive, thereby reducing the number of individuals that qualify for eligibility.
(**DAR Note:** A corresponding proposed amendment is under DAR No. 23349 in this *Bulletin*. This emergency rule supersedes the emergency rule published in the September 15, 2000, *Bulletin* under DAR No. 23111 that was effective September 1, 2000.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-10

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Anticipated aggregate cost savings for the Department is $213,400.
❖LOCAL GOVERNMENTS: The rule does not apply to local government, so there is no budget impact.
❖OTHER PERSONS: There will be a reduction of the number of eligible individuals as a result of restrictions in the gaining of eligibility. Because of fewer eligibles, providers will notice fewer individuals that can be provided services. Advocates probably will oppose this rule, but do not sustain any budget impact.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs are as described in Aggregate Anticipated cost or savings to: State, Local governments and Other Persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department has worked closely with advocacy groups and providers to minimize the cuts imposed by this rule. The Utah Medical Assistance Program must operate within the appropriation

authorized by the Utah Legislature. The changes in program benefits and eligibility imposed by this rule are necessary and unavoidable. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements.

UMAP cannot continue to function at its current budget without a significant reduction in the number of eligibles.

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Connie Christensen at the above address, by phone at (801) 538-9349, by FAX at (801) 538-6952, or by Internet E-mail at cchriste@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 12/01/2000

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-309. Utah Medical Assistance Program (UMAP).
R414-309-[~~90~~]1. UMAP General Eligibility Requirements.

(1[~~.~~]) The [~~d~~]Department [~~requires compliance~~]complies with Section 26-18-10. The [~~d~~]Department adopts [~~Pub. L. No. 104-193 (412), (431), and (435, which is incorporated by reference as amended by~~]Pub. L. No. 105-33(5302)(c)(2) and (3), (5306)(d), (5307)(a), (5563), (5566), and (5571), which is incorporated by reference.[~~The department adopts Pub. L. No. 105-33 (5307)(a). And (5566).~~]

(2[~~.~~]) The definitions in R414-1 and R414-301 apply to this rule. In addition, [~~T~~]the following definitions apply to this section:

(a[~~.~~]) "Unearned income" means cash received by an individual for which the individual performs no service.

(b[~~.~~]) "Full-time" employment means an average of 100 or more hours of work per month or an average of 23 hours per week.

(c[~~.~~]) A "bona fide" loan means a loan [~~which~~]that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

(d[~~.~~]) "Disregard" means a portion of income that is not counted.

(e) "Full-time student" means a person who is enrolled in any educational program, other than high school, and is attending full time as defined by that educational program.

(3[~~.~~]) Conditions of eligibility for UMAP:

(a[~~.~~]) Medical need is not a requirement for UMAP eligibility.

(b[~~.~~]) An individual ineligible for Medicaid because of resources is not eligible for UMAP assistance.

(c[~~.~~]) Individuals ineligible for Medicaid because they will not spenddown or because their medical expense is less than the spenddown, are not eligible for UMAP assistance.

(d) An individual who is a full-time student is not eligible for UMAP assistance. The spouse of a full-time student is not eligible for UMAP assistance if the full-time student and his or her spouse are living together or are not legally separated and have been separated for less than six months.

(4[~~.~~]) Citizenship requirements for UMAP:

[~~a.~~]Temporary entrants into the U.S. and those who have no registration card are not eligible for UMAP assistance. To be eligible for UMAP, the individual must be one of the following:

[~~i.~~](a) U.S. born or a naturalized citizen;

[~~ii.~~](b) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply, or who is a member of an Indian tribe as defined in section 4(e) of the Indian Self-determination and Education Assistance Act;

[~~iii.~~](c) Residents from Freely Associated States;

[~~iv.~~](d) A qualified alien, as defined in Pub. L. No. 104-193 (431), as amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571) who was admitted into the United States prior to August 22, 1996.

[~~v.~~](e) A qualified alien, newly admitted into the United States on or after August 22, 1996, is not eligible for UMAP services for five years from the person's date of entry into the United States, unless the person is:

[~~A.~~](i) A refugee admitted under section 207 of the Immigration and Nationality Act;

[~~B.~~](ii) An individual granted asylum under section 208 of the Immigration and Nationality Act;

[~~C.~~](iii) An individual whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act, (as in effect immediately before the effective date of section 307 of division C of Pub. L. No. 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Pub. L. No. 104-208);

[~~D.~~](iv) A Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980;

[~~E.~~](v) An Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act,[~~m~~] 1989, Pub. L. No. 100-461, as amended);

[~~F.~~](vi) An honorably discharged veteran from the Armed Forces of the United States, the spouse of a United States veteran, or the unremarried spouse of a deceased United States veteran;

[~~G.~~](vii) An individual on active duty in the Armed Forces of the United States or the spouse of such an individual;

[~~H.~~](viii) A Hmong or Highland Lao veteran who fought on behalf of the Armed Forces of the United States during the Vietnam conflict who has been lawfully admitted to the United States for permanent residence is considered a veteran for the purpose of determining eligibility.

(5[:]) Residence requirements for UMAP:

[a.~~]To be eligible for UMAP assistance, an individual must be a Utah resident. To be considered a Utah resident, a person must meet one of the following guidelines:

[i.](a) The client must live in Utah for 30 days prior to the need for medical services.

[ii.](b) The client must show intent to reside in the state permanently. If a client shows intent to reside in the State permanently, eligibility can begin no earlier than the date the client entered the state.

[b.](c) Any person who is a resident of a prison, jail or halfway house is not eligible for UMAP assistance. A person may qualify in the month in which he enters or leaves a prison, jail or halfway house. The program will not pay for services while the person is in custody. It does not matter if the condition was pre-existing. No payment will be made for any medical problems which arise during the commission of a crime or during an arrest.

(6[:]) All recipients of General Financial Assistance (GA) are eligible for UMAP assistance.

(7[:]) The Department shall determine [t]income eligibility[calculation] for UMAP as follows:

[a. Eligibility for UMAP is based on a best estimate of income as follows:

~~i. The department shall budget income and determine the best estimate in the same manner as Medicaid in R414-304-407.~~](a) At application, the Department shall total the actual countable income received in the 12 months prior to the application month, divide the total by 12 to arrive at a monthly average and compare the monthly average to the UMAP BMS for the household size.

(b) Persons whose averaged monthly countable income as determined in R414-309-1(7)(a) exceeds the UMAP BMS are not eligible for UMAP assistance.

(c) If the averaged monthly countable income as determined in R414-309-1(7)(a) does not exceed the UMAP BMS, the Department shall budget income and determine the best estimate for the application month and any ongoing month in the same manner as described in R414-304-7.

(d) The Department shall compare the countable income as determined by R414-309-1(7)(c) to the UMAP BMS for the household size. Persons with countable income in the application month or any ongoing month that exceeds the UMAP BMS are not eligible for UMAP assistance for that month.

(e) In determining the countable income for the 12 months prior to the application month, the application month, and ongoing months, the Department shall count all income received except:

[ii. The department shall count all income received except:

~~A.~~](i) a bona fide loan of money which must be repaid;

[B.](ii) rental subsidies;

[C.](iii) trust funds that are not available on demand;

[D.](iv) GA, AFDC, or Refugee Cash Assistance (RCA) grants;

[E.](v) HEAT assistance;

[F.](vi) attendant care received by a handicapped person from the Division of Services to the Handicapped if the money is used to pay for attendant care, and the person providing the care is not included in the household's basic maintenance standard (BMS);

[G.](vii) insurance settlements for destroyed property, if the income is actually used to replace the property. If the insurance settlement is more than the replacement cost of the new property, the difference is counted as income.

[H.](viii) unearned income in-kind.

[I.](ix) special payments to American Indians.

[iii.](c) The following deductions are allowed:

[A.](i) payments for a health or accident insurance policy;

[B.](ii) federal taxes are determined by multiplying the number of exemptions by $162.50, subtracting that amount from the wages, and comparing the remainder to the appropriate tax tables for a single or married person. Tax computation is as follows:

TABLE

Single Person Including Head of Household.					
Wages		Income Tax			
<$ 89		$ 0			
89 -	$1,575	0	plus	15% of Excess Over	$ 89
1,576 -	3,683	223.13	plus	28% of Excess Over	1,576
3,684 -	8,461	831.46	plus	33% of Excess Over	3,684
8,462 +		2,390.03	plus	28% of Excess Over	8,462

Married Person Including Head of Household.					
Wages		Income Tax			
<$ 255		$ 0			
255 -	$ 2,733	0	plus	15% of Excess Over	$ 255
2,734 -	6,246	371.88	plus	28% of Excess Over	2,734
6,247 -	15,422	1,355.38	plus	33% of Excess Over	6,247
15,423 +		4,383.40	plus	28% of Excess Over	15,423

[C.](iii) state taxes, as determined by multiplying the federal tax by .45;

[D.~~]FICA. If the client is self-employed, this is determined by multiplying monthly earnings by .1503. If the client is not self-employed, this is determined by multiplying monthly earnings by .0765.

[iii. Compare the figure derived from the above calculation to the BMS for the household size. This figure is called countable income. Persons with countable income above the BMS may spenddown to the BMS level, if the spenddown amount is $50.00 or less. The Department will not collect a spenddown for amounts of less than $1.00.

~~iv.~~](c) The UMAP income standard is as follows:

TABLE

Household Size	UMAP Income Standard (BMS)
1	337
2	413
3	516
4	602
5	686
6	756
7	792
8	829
9	868
10	904
11	941
12	978
13	1016
14	1053
15	1090
16	1128

(8[~]) When an individual's check amount differs from the entitlement amount, the check amount is used to determine income eligibility only if the reduction is involuntary.

(9[~]) Self-employment income:

[~~a.~~]Income from self-employment is counted. Deductions are allowed for the cost of doing business. Allowable deductions include:

[~~i.~~](a) labor;

[~~ii.~~](b) stock;

[~~iii.~~](c) raw materials;

[~~iv.~~](d) seed and fertilizer;

[~~v.~~](e) taxes and interest paid for income-producing property;

[~~vi.~~](f) insurance premiums;

[~~vii.~~](g) transportation costs only if the person must move from place to place in the course of business.

[~~b.~~](10) Deductions for income-producing property include:

[~~i.~~](a) property taxes;

[~~ii.~~](b) insurance;

[~~iii.~~](c) incidental repairs;

[~~iv.~~](d) advertising;

[~~v.~~](e) landscaping;

[~~vi.~~](f) utilities.

[~~c.~~](11) The cost of an addition or increase in value of the rental property is not allowed as a deduction.

[~~10.~~](12) UMAP budgeting methods:

(a[~]) Income shall be budgeted prospectively. Information provided by the client is used to determine the amount of income the client expects to receive during the eligibility period.

(b[~]) Farm and self-employment income is prorated over the number of months in which the money was earned if the income is received less often than monthly. The prorated amount is counted for the same number of months in which the money was earned. The month in which the money was received is counted as the first month, even if the money is not actually earned in that month.

(c[~]) Student grants and scholarships are prorated over the number of months the grants or scholarships are intended to cover. The first month it is intended to cover is the first budget month. If it is received after the first month it is intended to cover, the client is not liable for an understated liability based on receipt of this income.

(d[~]) Deferred income counts when it is available if it is not deferred by choice. If it is deferred by choice, it is counted for the months it could have been received.

(e[~]) Only student income and farm or self-employment income are prorated.

(f[~]) Lump sum payments can be earned or unearned income. Lump sums are income in the month received. An overpayment may exist for the month of receipt. Any amount remaining will count as a resource for the month following the month of receipt.

[~~11.~~](13) [~~Retroactive~~]UMAP coverage begins the date a completed, signed application is received by the Department. There is no provision for retroactive UMAP coverage.[~~no earlier than the first day of the month prior to the month of application. Coverage begins no later than the first day of the month in which an individual is determined eligible.~~]

[~~12.~~](14) The income of all individuals included in the BMS is used to determine eligibility.

[~~13.~~](15) Individuals included in the UMAP BMS:

(a[~]) A legally married spouse is included in the BMS if the couple lives together or they have not been separated more than six months. The spouse is not included if the couple is legally separated.

(b[~]) An unmarried person of the opposite sex who lives with the client is included in the BMS if the client is emancipated and the couple present themselves to the community as husband and wife.

(c[~]) Unemancipated children living with the client are included in the BMS if the client is emancipated. This includes natural, adopted, or stepchildren. Unborn children are not included in the BMS.

(d[~]) Parents living with the client are included in the BMS if the client is unemancipated. This includes natural, adopted or stepparents.

(e[~]) Unemancipated children of the client's parents are included in the BMS if they live with the parents and the client is unemancipated.

[~~14.~~](16) The client must report any change which may affect eligibility within ten days of the day the client learns of the change. Clients must report income from a new source within ten calendar days of the date the client receives money from that new source.

[~~15.~~](17) UMAP resource requirements:

(a[~]) The resource limit is $500 for a BMS of one and $750 for a BMS of two or more.

(b[~]) Countable resources include anything of value that is available to the person. When a person is part owner of property, the property is a resource only if the person has a legal right to sell the property. Only the equity value of the resource is counted.

(c[~]) If the resource limit is met at any time in the month, it is met for the entire month.

(d[~]) The following resources are exempt and are not counted to determine eligibility:

(i[~]) one home, including a mobile home;

(ii[~]) the lot upon which the home stands if the home is occupied by the client. If the lot on which the home stands exceeds the average size of residential lots in the community where it is, the equity value of the property that is larger than an average size lot is a resource;

(iii[~]) water rights attached to the home or lot occupied by the client;

(iv[~]) Contents of the home worth less than $1000 that are essential to daily living;

(v[~]) one vehicle;

(vi[~]) an irrevocable burial trust;

(vii[~]) one burial plot or space for any member of the client's immediate family;

(viii[~]) funds from a student loan, grant, or scholarship are exempt until the month following the end of the period the loan, grant, or scholarship is intended to cover;

(ix[~]) a life estate which serves as the primary residence of the client;

(x[~]) Lump sum insurance payments for destroyed property if the available money is used within ninety days to replace the destroyed property. All other lump sums are a resource in the month following the month of receipt.

(e[~]) The resources of everyone in the BMS are counted to determine eligibility.

(f[:]) Individuals are not sanctioned for transferring resources unless the transfer was made to become eligible for UMAP. If property is transferred in order to meet resource limitations, the person is ineligible for the month the transfer is made, and for the next five months. If the client regains the transferred resource and uses the resource to meet normal expenses, the sanction will be removed.

[~~16.~~](18) The UMAP clinic in Utah, Weber, Morgan, and Salt Lake Counties shall determine what services they will cover. The worker in all other counties shall determine what services they will cover.

[~~17.~~](19) Cooperation in collecting third party liability information is an eligibility requirement for UMAP assistance.

KEY: UMAP
December 1, 2000 26-18
Notice of Continuation February 6, 1998

Health, Health Care Financing, Medical Assistance Program
R420-1
Utah Medical Assistance Program

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 23350
FILED: 11/30/2000, 11:26
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The funding for UMAP is inadequate to sustain it at its current level. The intent of the rule is to reduce the services, and the cost of services paid for by UMAP for eligible individuals.

SUMMARY OF THE RULE OR CHANGE: In order to save costs for UMAP, there will be reductions in the amounts paid to providers, certain co-payments assigned to eligible individuals, and elimination of certain benefits formerly paid by UMAP.
(**DAR Note:** A corresponding proposed amendment is under DAR No. 23351 in this *Bulletin*. This emergency rule supersedes the emergency rule published in the September 15, 2000, *Bulletin* under DAR No. 23112 that was effective September 1, 2000.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-10

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Anticipated aggregate cost savings for the Department is $656,000.
❖LOCAL GOVERNMENTS: The rule does not apply to local government, so there is no budget impact.
❖OTHER PERSONS: Eligibles and providers will sustain a reduction in benefits. Eligibles will be faced with certain copayments as well as the elimination of some benefits formerly covered. Providers will sustain a reduction of reimbursement amounts. Advocates probably will oppose this rule, but do not sustain any budget impact.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs are as described in Aggregate Anticipated cost or saving to: State, Local governments and other Persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department has worked closely with advocacy groups and providers to minimize the cuts imposed by this rule. The Utah Medical Assistance Program must operate within the appropriation authorized by the Utah Legislature. The changes in program benefits and eligibility imposed by this rule are necessary and unavoidable. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements.
UMAP cannot continue to function at its current budget without significant reductions in services and payments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Health
Health Care Financing,
Medical Assistance Program
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Robert Knudson at the above address, by phone at (801) 538-6416, by FAX at (801) 538-6952, or by Internet E-mail at rknudson@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 12/01/2000

AUTHORIZED BY: Rod L. Betit, Executive Director

R420. Health, Health Care Financing, Medical Assistance Program.
R420-1. Utah Medical Assistance Program.

. . . . . .

R420-1-2. Definitions.
Terms used in this rule are defined in R414-1[~~-1~~], except that "client" shall have the meaning defined below. In addition:
(1) "Chronic condition" means a condition characterized by its long duration or recurrence.

(2) "Client" means a person who has completed a current form MI-13 and been approved for UMAP eligibility.

(3) "Crime" means any felony, misdemeanor, or infraction, of which an individual is eventually convicted[~~;~~]. Crimes also include those to which an individual pleads guilty or no contest, or those to which an individual enters into a diversion agreement as outlined in sections 77-2-5 through 77-2-9 UCA.

(4) "Emergency service" means a medical service performed to treat a condition [~~for which~~]that, in the absence of immediate medical attention, could reasonably be expected to result in death or permanent disability to the client. Immediate medical attention is treatment given within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(5) "Emergency transportation" means an air or ground ambulance required to transport a client in need of an emergency service. UMAP shall not reimburse for emergency transportation services if[~~This does not include any transportation in which~~] a client could have been safely transported by a less costly[~~any other~~] method of transportation.

(6) "In custody" means being detained or held under guard by law enforcement personnel at the scene of a crime or in a detention facility, until unconditionally released, or released on probation or parole. The [~~d~~]Department shall consider a resident of a jail, correctional facility, or half-way house to be in custody.

(7) "Life threatening condition" means a medical condition which, if not immediately treated, poses an imminent danger to life or will result in permanent disability. Disability is the limiting loss or absence of the capacity to perform activities of daily living or occupational demands. Permanent disability occurs when the degree of loss of this capacity becomes static or well-stabilized, and is not likely to improve despite continuing medical or rehabilitative measures.

(8) "Medically indigent" is abbreviated "MI", which is a prefix for UMAP form numbers.

(a) MI-13 is a UMAP form that explains to clients the rights and responsibilities they have as UMAP clients. A MI-13 form is current from the time it is completed until there is a break in eligibility of more than six consecutive months.

(b) MI-706 is a UMAP form entitled "UMAP Reimbursement Agreement" that authorizes reimbursement for a medical service.

(9) "Medically necessary" means reasonably calculated to prevent, diagnose, or cure conditions that endanger life, cause suffering and pain, cause physical deformity or malfunction, or threaten to cause a handicap, and there is no other equally effective course of treatment available or suitable for the client requesting the service that is more conservative or less costly.

(10) "Principal diagnosis at discharge" means the main medical problem, based on the best information available for review by UMAP.

R420-1-3. Client Eligibility Requirements.

(1) To be eligible for UMAP services, clients [~~shall~~]must meet the criteria in R414-309.[~~income and asset limits and other eligibility requirements found in the Medical Assistance Manual, Volume III F, which is incorporated by reference. Manuals~~] These criteria can be viewed[~~ at the local Office of Family Support, or~~] at the UMAP administrative office located at 288 N. 1460 W., Salt Lake City, Utah, or at any site where the Department of Workforce Services or the Department of Health determines eligibility for clients.[

~~(2) Eligibility for UMAP services is determined at an Office of Family Support district office.~~]

([~~3~~]2) Before a client can receive services from UMAP, he must have a specific medical need that is within the UMAP scope of services and meets all other UMAP criteria.

R420-1-4. Program Access Requirements.

(1) UMAP has three medical clinics. Each clinic has on its staff a physician, or a physician assistant or nurse practitioner working under the supervision of a physician. For clients who reside in Salt Lake, Weber, Morgan, and Utah counties, if the physician or supervising physician determines it appropriate, the physician, physician assistant, or nurse practitioner shall evaluate and treat the client.

(2) The clinic may[~~shall~~] refer the client outside of the clinic only for treatment of covered conditions that cannot be treated in the clinic. The supervising physician shall decide the conditions that can be treated at the clinic. The clinic manager shall decide the services that are covered under UMAP.

(3) Clients residing in all other counties may contact the nearest Office of [~~Family Support~~]Workforce Services for a form MI-706. This office may then refer the client to a private physician who is willing to treat the client within the guidelines of UMAP criteria.

R420-1-5. Service Coverage.

(1) The scope of services covered by UMAP is limited to treatment of conditions that meet one or more of the following criteria, unless elsewhere excluded:

(a) an acute condition characterized by a rapid onset requiring prompt medical attention. UMAP shall not consider a condition to be[~~ not~~] acute once it is medically established to have been in existence for four months or more, regardless of when the client began experiencing symptoms. Recurring conditions are not acute;

(b) a life-threatening condition that is not psychiatric;

(c) a communicable disease that poses a health risk to the general public;

(d) a condition that will result in irreversible blindness if left untreated, blindness meaning no better than 20/200 visual acuity in the better eye after correction.

(e) cataracts, if the correction is no better than 20/60 visual acuity in the better eye.

(f) eyeglasses for a client in a work or training program if the client cannot participate in the work or training without the eyeglasses, or for a diabetic client who cannot see well enough to administer his own medication.

(2) UMAP may cover the following medical services:

(a) outpatient hospital services;

(b) physician services;

(c) midwife and birthing center services;

(d) radiology and lab services;

(e) emergency transportation services for both air and ground;

(f) dental services;

(g) pharmacy services;

(h) rural health services;

(i) home health services for I.V. antibiotics.

(3) For all UMAP covered services, the principal diagnosis at discharge from the hospital is the reason for the care. UMAP may not consider the other diagnoses when determining whether the service is covered by UMAP.

(a) UMAP shall pay a [~~minimal set~~]fixed triage fee for emergency transportation, emergency room physicians, and emergency room facility charges for services that do not result in an inpatient admission, if the admission diagnosis is a UMAP covered medical condition, but the principal diagnosis at discharge is psychiatric.

(b) The [~~minimal set~~]fixed triage fee shall constitute payment for the entire service. A notation on the form MI-706 advises the provider that he received authorization for only the minimal set triage fee.

(4) A provider or a client may resolve questions about coverage of a specific condition or service by contacting the appropriate UMAP clinic in Salt Lake, Morgan, Weber, or Utah counties, or the Office of [~~Family Support~~]Workforce Services for all other counties, depending upon where the client lives.

R420-1-6. Limitations and Excluded Services.

(1) Conditions that are not covered by UMAP include:

(a) chronic pain, back pain, knee pain, joint pain, from recurring or chronic conditions;

(b) hernias that are not strangulated or incarcerated, carpal tunnel syndrome, bunions, nasal polyps;

(c) mental illness or disorder, drug addiction, alcohol addiction;

(d) obesity, hormonal imbalance, bulimia, anorexia nervosa;

(e) long-standing arthritis, except treatment of acute flare-ups is a covered service;

(f) allergies, cataracts, temporomandibular joint dysfunction, premenstrual syndrome, aseptic (avascular) necrosis;

(g) rhinitis, 24-hour gastritis, common cold, any condition for which there is no accepted medical therapy;

(h) a condition that is disabling, but does not meet the criteria listed in R420-1-5(1);

(i) a condition that is not covered by the Utah Medicaid program;

(j) a condition caused because of a snow skiing or snowboarding accident;

(k) a condition caused when the client was committing a crime. UMAP shall allow the client to present information to prove that involvement in the alleged crime did not cause or contribute to his medical condition. The client must submit this information within 60 days of the date of the denial;

(l) a condition caused when the client was being arrested;

(m) a condition caused when the client was injured by a law enforcement officer;

(n) a condition caused when the client was in custody[~~.~~];

(o) a condition that results from experimental or recreational use of drugs or chemicals, (with the exception of drinking distilled spirits, wine, or malt beverages, and smoking or chewing tobacco). UMAP considers use to be experimental or recreational if, on his own initiative, an individual uses:

(i) prescription drugs in a manner that is contrary to the physician's instructions for their use;

(ii) non-prescription drugs or chemicals in a manner that is contrary to package instructions, e.g., sniffing glue or other substances, drinking rubbing alcohol, laxative abuse;

(iii) illegal drugs, e.g., a drug or controlled substance, the use of which is a violation of state or federal law.

(p) UMAP determines use by an evaluation of the best available medical evidence regarding the condition.

(q) UMAP allows clients to present information to prove that experimental or recreational use of drugs or chemicals did not cause or contribute to the medical condition. Clients must submit this information within 60 days of the date of denial.

(2) Services that are not covered by UMAP include:

(a) cosmetic surgery;

(b) tympanoplasties;

(c) hysterectomies and pelvic surgery, except when there is a reasonable suspicion of a life threatening condition;

(d) back surgeries, knee surgeries, joint surgeries, for recurring or chronic conditions;

(e) psychiatry, or any service provided to a client while he is in a psychiatric facility, wing, ward, or bed;

(f) diagnostic work, unless a covered condition is suspected;

(g) speech pathology, audiology (except to rule out a brain tumor), audiometry (except to rule out a brain stem lesion);

(h) medical supplies, except syringes, lancets, test strips for diabetics, and ostomy supplies;

(i) medical equipment, except an oxygen concentrator if required 24 hours a day;

(j) prosthetic devices, except once when the need for the device arises from any authorized surgery;

(k) care in a long-term care facility, physical therapy, rehabilitative services, chiropractic services;

(l) dental work (except for exam, x-ray, and extraction of infected teeth), dentures;

(m) sterilization (tubal ligation, vasectomy, etc.), abortion (unless the life of the mother would be endangered if an abortion were not performed), birth control;

(n) elective surgery, organ transplants;

(o) liver biopsy or use of Interferon when being prescribed for treatment of Hepatitis C;

(p) treatment in a pain clinic;

(q) non-emergency use of an emergency room or emergency transportation;

(r) a service that is not covered by the Utah Medicaid program;

(s) a service if the department determines that there is or was an effective less-costly alternative;

(t) a service provided to treat a medical condition, if the need for treatment arose while the client was in custody;

(u) a service for a condition that is a complication of, or a follow-up service for, a non-covered UMAP service. The only exception would be if the service was not covered as a result of lack of client eligibility[~~.~~];

(v) medication that is prescribed for the treatment of hypercholesterolemia;

(w) D4K anti-ulcer PPIs;

(x) hormones that are prescribed for the treatment of female hypogonadism.

R420-1-7. Form MI-706.

(1) UMAP may only pay for a service authorized on a form MI-706. [~~Generally, t~~]The client must obtain the form MI-706 before the service is provided. The client may obtain the form MI-706 after the service is provided if the service is within UMAP scope of services, meets all other UMAP criteria, and:

(a) is a[~~for~~] follow-up service[~~s~~] for a surgery that UMAP has authorized. Follow-up services are for normal, uncomplicated post-surgery hospitalization, office follow-ups, or other services provided within six weeks of the surgery and directly related to the surgery; or

(b) is [~~for~~]an emergency service; or

(c) is a[~~for~~] service[~~s~~] that was[~~were~~] provided before UMAP approved the client for eligibility, and before the client had completed a current form MI-13. The client must request the form MI-706 no later than one year after the date of service, or the date UMAP approved his eligibility, whichever is later. The client shall provide any documentation that UMAP requires, or the client wants considered, to make scope-of-service decisions.

(2) A client must present the form MI-706 to the provider before receiving any service, except for situations in which there is no UMAP requirement for the client to obtain the form MI-706 prior to receiving the service. If a client presents a form MI-706 to a provider before receiving a service, and the provider accepts the form MI-706, the provider may not hold the client financially liable for the service that was provided, whether or not UMAP reimburses the provider. If a client does not present a form MI-706 to a provider, or if the provider does not accept the form MI-706, the provider may hold the client financially liable for the service and treat the client as a "self-pay" patient. Any time a provider receives a form MI-706, and bills UMAP using the MI-706 number, UMAP shall consider that the provider has accepted the form MI-706.

(3) After a client has completed a current form MI-13 and is approved for UMAP eligibility, he must present a form MI-706 to the provider for all non-emergency services before the services are provided.

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R420-1-9. Reimbursement.

UMAP shall only reimburse Utah Medicaid providers who accept payment from UMAP as payment in full for the service provided. UMAP adopts the Utah Medicaid reimbursement policies and payment rates for services covered by UMAP, with the following exceptions:

(1) outpatient services, and ambulatory surgical center services shall be reimbursed at the Medicaid rate, minus 10%;

(2) physician services, osteopathic services, and services provided by Federally Qualified Health Centers shall be reimbursed at the Medicaid rate, minus 10%;

(3) a client is required to pay a $2 co-pay for each UMAP covered pharmacy item (those billed using a NDC code) each time the item is dispensed or purchased.

[~~-~~]Because inpatient hospital services are not a benefit of UMAP, UMAP shall not reimburse for these services.

R420-1-10. Third Party Liability.

(1) UMAP may not reimburse for covered medical services if payment for the service can be, or could have been, obtained from other third-party sources. If partial payment is made by a third-party payor, UMAP shall pay the difference up to the limits set by Medicaid.

(2) Clients and providers shall disclose potentially liable third parties. When any other coverage is available (such as treatment at the Veterans Administration Hospital), the UMAP clinic or provider shall refer the client there for treatment, and UMAP may not authorize payment for those services.

(3) Clients who are potentially eligible for services through the Ryan White Title II Aids Drug Assistance Program (ADAP) must apply for, and follow through with their application for ADAP. UMAP shall not pay if the client fails to cooperate in obtaining benefits through that program.

R420-1-11. Client Rights and Responsibilities.

(1) The client shall make an appointment to see office or clinic staff.

(2) If a client misses an appointment in a UMAP clinic, the client shall have [~~either of~~]two options regarding future appointments. The client may[~~can~~] come in as a walk-in and wait to be seen on a first-come-first-served basis after clients who have appointments, or the client may[~~can~~] make a co-payment before being seen at his next appointment. The co-payment is $1 for missing one appointment, $2 for missing two consecutive appointments, and $3 for missing three consecutive appointments. If the client misses more than three consecutive appointments, the client must come in as a walk-in and wait to be seen on a first-come-first-served basis after clients who have appointments. Clients may cancel UMAP clinic appointments up to two hours before the appointment with no penalty.

(3) If a client misses an appointment with a private provider, the client shall make a $5 co-payment to UMAP for each of the client's next two appointments with private providers before the client will be given a form MI-706 for these appointments. If the client keeps these appointments, UMAP will refund the $5 as soon as the client returns to UMAP and UMAP verifies that the client kept the appointment. UMAP shall consider appointments with private providers to be missed if the client cancels the appointment less than 24 hours before the appointment.

(4) UMAP may deny services to a client who verbally or physically abuses a member of the UMAP staff.

(5) UMAP shall send a Notice of Denial to a client who is denied coverage for a requested medical treatment. If a client or a provider is aggrieved by any action or inaction of the department, the person aggrieved may request a hearing in accordance with R410-14. A provider does not have standing to contest issues concerning scope of services or the client's eligibility status.

(6) The client shall be responsible for making a timely request for a form MI-706. If he fails to obtain the form MI-706, the client shall be liable for any costs incurred.

KEY: indigent, medicaid, UMAP
December 1, 2000 26-1-5
Notice of Continuation July 21, 1997 26-18-10

Insurance, Administration
R590-206
Privacy of Consumer Financial and Health Information Rule

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 23370
FILED: 12/01/2000, 13:26
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to govern the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the Utah Insurance Department. The rule gives guidance to licensees of the department in regard to the requirements under Title V of the Gramm-Leach-Bliley (GLB) Act of 1999.

SUMMARY OF THE RULE OR CHANGE: The rule requires licensees to provide notice to individuals about their privacy policies and practices. The rule also describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and non-affiliated third parties. And, the rule provides methods for individuals to prevent a licensee from disclosing such information.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-2-202
FEDERAL REQUIREMENT FOR THIS RULE: 15 U.S.C. 6801-6820

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The emergency rule adopts state regulations and give those subject to the regulations guidelines by which they can develop safeguards, procedures and systems to protect their customers' nonpublic personal information consistent with the regulations. It will also preserve the State's ability to regulate the disclosure of such information. The only cost to the department will be printing and mailing costs to notify the insurance industry about this emergency rule. Mailing will be sent to 1,360 insurers, associations and other interested parties. The cost will be approximately $559.20 for mailing and printing costs.
❖LOCAL GOVERNMENTS: This rule will not require any action by local government. Therefore, no costs to it will result. Neither will It generate any savings to local government.
❖OTHER PERSONS: The persons affected by the emergency rule will be state chartered financial institutions that conduct the business of insurance, domestic insurance companies, resident agents, resident agencies, resident brokers, insurance consultants, adjusters and other individuals or entities regulated by the Utah Insurance Department. The department estimates that the rule will not result in savings to those impacted by the rule. It will result in costs to those licensees of the department that are subject to the rule. The costs have not been determined and the department is unable to estimate the costs. It will ask each interested person or entity to provide those costs resulting from this federally mandated regulation. If the state fails to adopt the regulation it will not be eligible to enact these consumer protections in the future. The benefits to the individual and the general public in having nonpublic personal health and financial information protected against misuse and improper and unlawful disclosure outweigh the costs associated with compliance.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The persons affected by the emergency rule will be state-chartered financial institutions that conduct the business of insurance, domestic insurance companies, agents, agencies, brokers, insurance consultants, adjusters and other individuals or entities regulated by the Utah Insurance Department. The department estimates that the rule will not result in savings to those impacted by the rule. It will result in costs to those licensees of the department that are subject to the rule. The federal government has not determined the cost for compliance and the department is unable to estimate the costs. It will ask each interested person or entity to provide those costs resulting from this federally mandated regulation. If the state fails to adopt the regulation it will not be eligible to enact these consumer protections in the future. The benefits to the individual and the general public in having nonpublic personal health and financial information protected against misuse and improper and unlawful disclosure outweigh the costs associated with compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule adopts guidelines that permit the department's licensees to be in compliance with Section V of the Gramm-Leach-Bliley Act (GLB). The GLB Act requires state insurance regulators to adopt regulations governing the treatment of nonpublic personal health and financial information by its licensees. If the department fails to enact such regulation, the state will not be eligible for protection from preemption by the federal regulator rules. The federal regulators have stated that the fiscal impact of the federal regulations will not be more than $100 million dollars for state, local, tribal governments in the aggregate or on the private sector as a whole in the United States but have not provided actual numbers. The department is unable at this time to estimate the fiscal impact on the banking, securities, and insurance industries in Utah. However, the benefits of this rule to the general public and the individual counter balance the cost. The department intends to request interested persons to provide compliance and fiscal impact costs as part of the hearing required by the Rulemaking Act.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.

The Gramm-Leach-Bliley Act of 1999 was enacted by Congress and signed by the President on November 12, 1999. Provisions of this act required federal banking agencies and certain other federal agencies to issue final regulations safeguarding banking customers' records and information. The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and the Office of Thrift

Supervision issued joint regulations on May 10, 2000, implementing the consumer financial information privacy provisions of the act. The rules became effective November 13, 2000, however, the federal agencies established July 1, 2001, as the deadline for full compliance with the regulations. The regulations require financial institutions under the jurisdiction of the federal agencies to establish policies, procedures and systems that protect and prevent inappropriate disclosure of nonpublic personal information of their customers. The Gramm-Leach-Bliley Act also requires state insurance regulators to implement rules establishing privacy standards governing disclosure and use of customer information and records of financial institutions and other persons that are subject to their jurisdiction. Failure to adopt these rules will make a state ineligible to override the federal regulations that have been implemented. The Utah Insurance Department has been working with the National Association of Insurance Commissioners (NAIC) to develop uniform model regulations regulating the privacy of consumer financial and health information of state regulated financial institutions and other state regulated persons. The Utah Insurance Commissioner has determined that an emergency and perilous situation in the Utah insurance market exists that will immediately and adversely affect state regulated institutions and other persons. The emergency rule will adopt final regulations and give those subject to the regulations time in which to develop safeguards, procedures and systems to protect their customers' nonpublic personal information consistent with the regulations. It will also preserve the State's ability to regulate the disclosure of such information. Furthermore, the regulations will protect Utah citizens against unlawful disclosure and use of their non-public personal health and financial information. Without the guidelines provided by this rule the general public is at risk of the misuse and improper disclosure of nonpublic personal health and financial information acquired by licensees of the department during their customers transactions. This peril is great, immediate, and harmful to the insurance industry, persons insured by the industry and to the public. Immediate issuance of the rule to be in compliance with section V of the Gramm-Leach-Bliley Act is warranted.

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 jwhitby@insurance.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 12/01/2000

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-206. Privacy of Consumer Financial and Health Information Rule.

R590-206-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805)) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999(15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b)of the federal act.

R590-206-2. Purpose and Scope.

(1) Purpose. This rule governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the Utah Insurance Department. This rule:

(a) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(b) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and

(c) Provides methods for individuals to prevent a licensee from disclosing that information.

(2) Scope. This rule applies to:

(a) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This rule does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and

(b) All nonpublic personal health information.

(3) Compliance. A licensee domiciled in this state that is in compliance with this rule in a state that has not enacted laws or rules that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

R590-206-3. Rule of Construction.

The examples in this rule and the sample clauses in Appendix A are not exclusive. Appendix A - Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," drafted September 20, 2000, Copyright 2000 by the National Association of Insurance Commissioners, is incorporated by reference and available for inspection at the Department of Insurance and the Department of Administrative Rules. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

R590-206-4. Definitions.

As used in this rule, unless the context requires otherwise:

(1) "Affiliate" means any company that controls, is controlled by or is under common control with another company.

(2)(a) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(b) Examples.

(i) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(A) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Uses short explanatory sentences or bullet lists whenever possible;

(C) Uses definite, concrete, everyday words and active voice whenever possible;

(D) Avoids multiple negatives;

(E) Avoids legal and highly technical business terminology whenever possible; and

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

(ii) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(A) Uses a plain-language heading to call attention to the notice;

(B) Uses a typeface and type size that are easy to read;

(C) Provides wide margins and ample line spacing;

(D) Uses boldface or italics for key words; and

(E) In a form that combines the licensee"s notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(iii) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(A) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(4) "Commissioner" means the Utah Insurance commissioner.

(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(6)(a) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative.

(b) Examples.

(i) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(ii) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(iii) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(iv) An individual is a licensee's consumer if:

(A)(I) the individual is a beneficiary of a life insurance policy underwritten by the licensee;

(II) the individual is a claimant under an insurance policy issued by the licensee;

(III) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(IV) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(B) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 14, 15 and 16 of this rule.

(v) Provided that the licensee provides the initial, annual and revised notices under Sections 5, 6 and 9 of this rule to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, workers' compensation plan participant, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under Sections 14, 15 and 16 of this rule, an individual is not the consumer of the licensee solely because he or she is:

(A) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(B) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or

(C) A beneficiary in a workers' compensation plan.

(vi)(A) The individuals described in Subsection R590-206-4.(6)(b)(v)(A) through (C) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subsection R590-206-4.(6)(b)(v).

(B) In no event shall the individuals, solely by virtue of the status described in Subsection R590-206-4.(6)(b)(v)(A) through (C) above, be deemed to be customers for purposes of this rule.

(vii) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(viii) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

(7) "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(8) "Control" means:

(a) Ownership, control or power to vote 25% or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(b) Control in any manner over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of the company; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

(9) "Customer" means a consumer who has a customer relationship with a licensee.

(10)(a) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

(b) Examples.

(i) A consumer has a continuing relationship with a licensee if:

(A) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(B) The consumer obtains financial, investment or economic advisory services relating toan insurance product or service from the licensee for a fee.

(ii) A consumer does not have a continuing relationship with a licensee if:

(A) The consumer applies for insurance but does not purchase the insurance;

(B) The licensee sells the consumer airline travel insurance in an isolated transaction;

(C) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(D) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;

(E) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(F) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials;

(G) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(H) For the purposes of this rule, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(11)(a) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(12)(a) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section (4)(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(13) "Health care" means:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(i) Relates to the physical, mental or behavioral condition of an individual; or

(ii) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(b) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(14) "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

(15) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(a) The past, present or future physical, mental or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(16)(a) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(b) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

(17)(a) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Insurance Law of this state.

(b) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1-4 of this rule if the licensee is an employee, agent or other representative of another licensee, "the principal," and:

(i) The principal otherwise complies with, and provides the notices required by, the provisions of this rule; and

(ii) The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this rule.

(c)(i) Subject to Subsection R590-206-4.(17)(b)(ii), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to Section 31A-15-103 of this state's laws.

(ii) A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1-4 of this rule provided:

(A) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this rule, except as permitted by Section 15 or 16 of this rule; and

(B) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type: "PRIVACY NOTICE: NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

(18)(a) "Nonaffiliated third party" means any person except:

(i) A licensee's affiliate; or

(ii) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(b) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Subsection R590-206-4.(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

(19) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

(20)(a) "Nonpublic personal financial information" means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available.

(b) Nonpublic personal financial information does not include:

(i) Health information;

(ii) Publicly available information, except as included on alist described in Subsection R590-206-4.(20)(a)(ii); or

(iii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available.

(c) Examples of lists.

(i) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(21) "Nonpublic personal health information" means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(22)(a) "Personally identifiable financial information" means any information:

(i) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(ii) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(iii) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(b) Examples.

(i) Information included. Personally identifiable financial information includes:

(A) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(B) Account balance information and payment history;

(C) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(D) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(E) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(F) Any information the licensee collects through an Internet cookie, an information-collecting device from a web server; and

(G) Information from a consumer report.

(ii) Information not included. Personally identifiable financial information does not include:

(A) Health information;

(B) A list of names and addresses of customers of an entity that is not a financial institution; and

(C) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

(23)(a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, state or local law.

(b) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(c) Examples.

(i) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) Reasonable basis.

(A) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

R590-206-5. Initial Privacy Notice to Consumers Required.

(1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection R590-206-5.(5) of this section; and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.

(2) When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection R590-206-5.(1)(b) of this section if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15 and 16, and the licensee does not have a customer relationship with the consumer; or

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) When the licensee establishes a customer relationship.

(a) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(b) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(i) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(ii) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

(4) Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection R590-206-5.(1) of this section as follows:

(a) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or

(b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection R590-206-5.(1) of this section.

(5) Exceptions to allow subsequent delivery of notice.

(a) A licensee may provide the initial notice required by Subsection R590-206-5.(1)(a) of this section within a reasonable time after the licensee establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) Examples of exceptions.

(i) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(ii) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(iii) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

(6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 10. If the licensee uses a short-form initial notice for non-customers according to Subsection R590-206-7.(4) the licensee may deliver its privacy notice according to Subsection R590-206-7.(4)(c).

R590-206-6. Annual Privacy Notice to Customers Required.

(1)(a) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of 12 consecutive months during which that relationship exists. A licensee may define the 12 consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(b) Example. A licensee provides a notice annually if it defines the 12 consecutive month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year two.

(2)(a) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(b) Examples.

(i) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(ii) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve 12 consecutive months, other than to provide annual privacy notices, material required by law or rule, or promotional materials.

(iii) For the purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(iv) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(4) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 10.

R590-206-7. Information to be Included in Privacy Notices.

(1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14, and no other exception in Sections 15 and 16 applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Subsection R590-206-11.(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(i) Any disclosure that the licensee makes under Subsection R590-206-7.(2).

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 15 and 16, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with the licensee or its affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

(i) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Subsection R590-206-7.(3)(a), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(B) Transaction information, such as information about balances, payment history and parties to the transaction; and

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(iii) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(i) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(ii) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(iii) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(d) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection R590-206-7.(1)(e) of this section if it:

(i) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection R590-206-7.(1)(b) of this section, as applicable; and

(ii) States whether the third party is:

(A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) A financial institution with whom the licensee has a joint marketing agreement.

(e) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15 and 16, the licensee may simply state that fact, in addition to the information it shall provide under Subsections R590-206-7.(1)(a), 7.(1)(h), 7.(1)(i), and 7.(2).

(f) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(i) Describes in general terms who is authorized to have access to the information; and

(ii) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt out notice for non-customers.

(a) A licensee may satisfy the initial notice requirements in Subsections R590-206-5.(1)(b) and Subsection R590-206-8.(3) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(b) A short-form initial notice shall:

(i) Be clear and conspicuous;

(ii) State that the licensee's privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to Section 10. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.

(d) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(i) Provides a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample clauses. Sample clauses illustrating some of the notice content required by this section are found in Appendix A - Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," drafted September 20, 2000, Copyright 2000 by the National Association of Insurance Commissioners. Appendix A is incorporated by reference and available for inspection at the Department of Insurance and the Department of Administrative Rules.

R590-206-8. Form of Opt Out Notice to Consumers and Opt Out Methods.

(1)(a) Form of opt out notice. If a licensee is required to provide an opt out notice under Subsection R590-206-11.(1), it shall provide a clear and conspicuous notice to each of its

consumers that accurately explains the right to opt out under that section. The notice shall state:

(i) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(b) Examples.

(i) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(A) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Subsections R590-206-7.(1)(b) and R590-206-7.(1)(c), and states that the consumer can opt out of the disclosure of that information; and

(B) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(ii) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(A) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Includes a reply form together with the opt out notice;

(C) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(D) Provides a toll-free telephone number that consumers may call to opt out.

(iii) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(iv) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.

(3) Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer, as explained in Subsection R590-206-8.(4)(e).

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(e) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(i) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If the licensee does so:

(A) It shall permit John and Mary to opt out for each other;

(B) If both opt out, the licensee shall permit both of them to notify it in a single response, such as on a form or through a telephone call; and

(C) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

R590-206-9. Revised Privacy Notices.

(1) General rule. Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2) Examples.

(a) Except as otherwise permitted by Sections 14, 15 and 16, a licensee shall provide a revised notice before it:

(i) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

(ii) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

(iii) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 10.

R590-206-10. Delivery.

(1) How to provide notices. A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(i) Hand-delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

(iii) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(iv) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(ii) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Subsection R590-206-5.(1)(a), the annual notice required by Subsection R590-206-6.(1), and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(i) Hand-delivers a printed copy of the notice to the customer;

(ii) Mails a printed copy of the notice to the last known address of the customer; or

(iii) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Subsections R590-206-5.(1), 6.(1) and 9.(1), respectively, by providing one notice to those consumers jointly.

R590-206-11. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

(1)(a) Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(i) The licensee has provided to the consumer an initial notice as required under Section 5;

(ii) The licensee has provided to the consumer an opt out notice as required in Section 8;

(iii) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(b) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15 and 16.

(c) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(i) By mail. The licensee mails the notices required in Subsection R590-206-11.(1)(a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices.

(ii) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Subsection R590-206-11.(1)(a) electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Subsection R590-206-11.(1)(a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

R590-206-12. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information.

(1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 15 or 16 of this rule, the licensee's disclosure and use of that information is limited as follows:

(i) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(ii) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(iii) The licensee may disclose and use the information pursuant to an exception in Sections 15 or 16 of this rule, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 15 or 16 of this rule, the licensee may disclose the information only:

(i) To the affiliates of the financial institution from which the licensee received the information;

(ii) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 15 or 16:

(i) The licensee may use that list for its own purposes; and

(ii) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 15 or 16, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 15 or 16 of this rule, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 15 or 16 of this rule, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

R590-206-13. Limits on Sharing Account Number Information for Marketing Purposes.

(1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar

form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. R590-206-13.(1) does not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3) Examples.

(a) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

R590-206-14. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.

(1) General rule.

(a) The opt out requirements in Sections 8 and 11 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(i) Provides the initial notice in accordance with Section 5; and

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 15 or 16 in the ordinary course of business to carry out those purposes.

(b) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections 15 or 16 in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection R590-206-14.(1) of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

(3) Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

R590-206-15. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

(1) Exceptions for processing transactions at consumer's request. The requirements for initial notice in Subsection R590-206-5.(1)(b), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(a) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(b) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(c) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(d) Reinsurance or stop loss or excess loss insurance.

(2) "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

(a) Required, or is one of the lawful or appropriate methods, to enforce the licensee=s rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits, including utilization review activities, participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

R590-206-16. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

(1) Exceptions to opt out requirements. The requirements for initial notice to consumers in Subsection R590-206-5.(1)(b), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply when a licensee discloses nonpublic personal financial information:

(a) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(b)(i) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud or unauthorized transactions;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21, Financial Record keeping, a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

(e)(i) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(ii) From a consumer report reported by a consumer reporting agency;

(f) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(g)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

(h) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

(2) A licensed or admitted insurer that is the subject of a formal delinquency proceeding under Sections 31A-27-303, 31A-27-307 and 31A-27-310, are not subject to the requirements of R590-206-5.(1)(b), the opt out in Sections (8) and (11), and other notice requirements of R590-206.

(3) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Subsection R590-206-8.(6).

R590-206-17. When Authorization Required for Disclosure of Nonpublic Personal Health Information.

(1) A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

(2) Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: claims administration; claims adjustment and management; detection investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; ratemaking and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

R590-206-18. Authorizations.

(1) A valid authorization to disclose nonpublic personal health information pursuant to this Article V shall be in written or electronic form and shall contain all of the following:

(a) The identity of the consumer or customer who is the subject of the nonpublic personal health information;

(b) A general description of the types of nonpublic personal health information to be disclosed;

(c) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;

(d) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and

(e) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

(2) An authorization for the purposes of this Article V shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than 24 months.

(3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to this Article V at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

(4) A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

R590-206-19. Authorization Request Delivery.

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section 10, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Subsection R590-206-17.(1).

R590-206-20. Relationship to Federal Rules.

Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services, as published in the Federal Register November 3, 1999 (64 FR 59918-60065), the "federal rule", if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to the provisions of this Article V.

R590-206-21. Relationship to State Laws.

Nothing in this article shall preempt or supercede existing state law related to medical records, health or insurance information privacy.

R590-206-22. Protection of Fair Credit Reporting Act.

Nothing in this rule shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of that Act.

R590-206-23. Nondiscrimination.

(1) A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this rule.

(2) A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this rule.

R590-206-24. Violation.

Pursuant to Section 31A-23-302, the commissioner finds that the failure to observe the requirements of this rule is misleading to the public and individuals transacting business with licensees of the department or any person or individual who should be licensed by the department. The failure to observe the rule's requirement is also an unreasonable restraint on competition.

Violation of any provisions of the rule will result in appropriate enforcement action by the department which may include forfeiture, penalties, and revocation of license.

R590-206-25. Severability.

If any section or portion of a section of this rule or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

R590-206-26. Effective Date.

(1) Effective date. This rule is effective December 1, 2000. In order to provide sufficient time for licensees to establish policies and systems to comply with the requirements of this rule, the commissioner has extended the time for compliance with this rule until July 1, 2001.

(2)(a) Notice requirement for consumers who are the licensee's customers on the compliance date. By July 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 1, 2001.

(b) Example. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

(3) Two-year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Subsection R590-206-14.(1)(a)(ii) of this rule, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.

KEY: insurance law
December 1, 2000 **31A-2-201**
31A-2-202
Title V, Section 505

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).

Commerce, Occupational and Professional Licensing

R156-20a

Environmental Health Scientist Act Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23335
FILED: 11/20/2000, 10:19
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: Title 58, Chapter 20a provides for the licensure of environmental health scientists. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-20a-201(3) provides that the Environmental Health Scientist Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. These rules were enacted to clarify the provisions of Title 58, Chapter 20a with respect to environmental health scientists.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: When the rules were initially proposed in September 1995, two comments were received with respect to the proposed rules. One letter was from William Emminger, who was a member of the Environmental Health Scientist Board, at the time and three letters were from Richard W. Clark, a member of the general public. All letters provided suggested changes that should be made to the proposed rules. As a result of comments received and comments offered during the rule hearing, which was conducted on November 14, 1995, changes in the proposed rule were made and filed with the Division of Administrative Rules. Since the rules were made effective on January 2, 1996, no additional written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it clarifies the provisions of Title 58, Chapter 20a with respect to environmental health scientists.

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:
David Fairhurst at the above address, by phone at (801) 530-6621, by FAX at (801) 530-6511, or Internet E-mail at brdopl.dfairhur@email.state.ut.us.

AUTHORIZED BY: A. Gary Bowen, Director

EFFECTIVE: 11/20/2000

Community and Economic Development, Community Development, History

R212-11

Historic Preservation Tax Credit

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23371
FILED: 12/01/2000, 13:43
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: Sections 59-7-609.5 and 59-10-108.5 provide for tax credits for historic home rehabilitation. The rule ensures an orderly process, appeal and judicial review, and standards of compliance.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law is active. Hundreds seek the tax credit so the rule needs to remain.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Community and Economic Development
Community Development, History
Rio Grande Depot
300 Rio Grande
Salt Lake City, UT 84101-1182, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Alycia Aldrich at the above address, by phone at (801) 533-3556, by FAX at (801) 533-3503, or Internet E-mail at aaldrich@history.state.ut.us.

AUTHORIZED BY: Wilson Martin, Program Manager and Historic Preservation Officer

EFFECTIVE: 12/01/2000

Environmental Quality, Water Quality
R317-102
Utah Wastewater State Revolving Fund (SRF) Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23365
FILED: 12/01/2000, 08:16
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 19-5-104 authorizes the Utah Water Quality Board to adopt rules to implement awarding loans for point source and non-point source water pollution control projects under Title 73, Chapter 10c, and Title VI of the Federal Clean Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received either supporting or opposing the rule.

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 to implement the Utah Wastewater State Revolving Fund (SRF) Program. The rule is also required to qualify for federal capitalization grant funds under Title VI of the federal Clean Water Act. The rule establishes policies and procedures for implementing the SRF Program, including definitions, eligibility requirements, and technical requirements central to the Water Quality Board's implementation of their statutory charge.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Water Quality
Third Floor, Cannon Health Building
288 North 1460 West
PO Box 144870
Salt Lake City, UT 84114-4860, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
David Wham at the above address, by phone at (801) 538-6052, by FAX at (801) 538-6016, or Internet E-mail at dwham@deq.state.ut.us.

AUTHORIZED BY: Dianne R. Nielson, Director

EFFECTIVE: 12/01/2000

Human Services, Administration, Administrative Hearings
R497-100
Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23338
FILED: 11/27/2000, 14:22
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 outlines the administrative hearing process for the Department of Human Services as required by Utah Code Ann. Section 63-46b-1 et seq. (the Utah Administrative Procedures Act).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Utah Code Ann. Section 63-46b-1 et seq. requires administrative agencies to designate hearings as either "formal" or "informal" and to outline the procedures to be followed in administrative hearings before each particular agency. This rule is required for Human Services to have a hearing process.

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

Human Services
Administration, Administrative Hearings
Room 122
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:
Debbie L. Hann at the above address, by phone at (801) 538-3900, by FAX at (801) 538-4604, or Internet E-mail at dhann@hsadmin.state.ut.us.

AUTHORIZED BY: Debbie Hann, Director

EFFECTIVE: 11/27/2000

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Natural Resources, Wildlife Resources

R657-5

Taking Big Game

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23355
FILED: 11/30/2000, 18:27
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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to provide rules to regulate and prescribe the means by which protected wildlife may be taken.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources and the Wildlife Board have received several comments, both in support and opposition to Rule R657-5, Taking Big Game. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the annual process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-5 provides the application procedures, standards, and requirements for taking big game. The provisions adopted in this rule are effective in providing the standards and requirements for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat. Continuation of this rule is necessary for continued success of this program.

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

Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or Internet E-mail at nrdwr.dsundell@email.state.ut.us.

AUTHORIZED BY: John Kimball, Director

EFFECTIVE: 11/30/2000

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Natural Resources, Wildlife Resources
R657-17
Lifetime Hunting and Fishing License

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23357
FILED: 11/30/2000, 18:27
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: Under Section 23-19-17.5, the Wildlife Board is authorized to provide the requirements and procedures applicable to lifetime hunting and fishing licenses.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources and the Wildlife Board have received several comments, both in support and opposition to Rule R657-17, Lifetime Hunting and Fishing License. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the annual process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-17 provides the procedures, standards, and requirements applicable to lifetime hunting and fishing licenses. The provisions adopted in this rule are effective in providing the standards and requirements for administering the lifetime hunting and fishing license program. Continuation of this rule is necessary for continued success of this program.

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

Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or Internet E-mail at nrdwr.dsundell@email.state.ut.us.

AUTHORIZED BY: John Kimball, Director

EFFECTIVE: 11/30/2000

Natural Resources, Wildlife Resources
R657-38
Dedicated Hunter Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23359
FILED: 11/30/2000, 18:27
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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to provide rules to regulate and prescribe the means by which protected wildlife may be taken.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources and the Wildlife Board have received several comments, both in support and opposition to Rule R657-38, Dedicated Hunter Program. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the annual process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-38 provides the standards and requirements for obtaining a certificate of registration to maximize opportunity for recreational deer hunting; increases public participation in wildlife management programs; and provides hunter ethic and wildlife management principle educational courses. The provisions adopted in this rule are effective in providing the standards and requirements for administering the Dedicated Hunter Program. Continuation of this rule is necessary for continued success of this program.

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

Natural Resources
Wildlife Resources
Suite 2110

1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or Internet E-mail at nrdwr.dsundell@email.state.ut.us.

AUTHORIZED BY: John Kimball, Director

EFFECTIVE: 11/30/2000

Natural Resources, Wildlife Resources
R657-41
Conservation and Sportsman Permits

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23361
FILED: 11/30/2000, 18:27
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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to provide rules to regulate and prescribe the means by which protected wildlife may be taken.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources and the Wildlife Board have received several comments, both in support and opposition to Rule R657-41, Conservation and Sportsman Permits. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the annual process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-41 provides the procedures, standards, and requirements for issuing sportsman permits and conservation permits to conservation organizations for sale at auctions, or for use as an aid to wildlife-related fund raising activities. The provisions adopted in this rule are effective in providing the standards and requirements for issuing conservation and sportsman permits. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or Internet E-mail at nrdwr.dsundell@email.state.ut.us.

AUTHORIZED BY: John Kimball, Director

EFFECTIVE: 11/30/2000

Natural Resources, Wildlife Resources
R657-42
Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23363
FILED: 11/30/2000, 18:27
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: Under Sections 23-19-1 and 23-19-38, the Wildlife Board is authorized to provide the requirements and procedures applicable to the issuance of licenses, permits, tag, and certificates of registration.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources and the Wildlife Board have received several comments, both in support and opposition to Rule R657-42, Accepted Payment of Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the

Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the annual process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-42 provides the procedures, standards, and requirements applicable to the division issuing licenses, permits, tags, and certificates of registration. Specifically, this rule provides the standards and procedures for the exchange of permits; surrender of licenses, permits and certificates of registration; the refund of licenses, permits and certificates of registration; and the reallocation of permits. The provisions adopted in this rule are effective in providing the standards and requirements for the division issuing licenses, permits, tags, and certificates of registration. Continuation of this rule is necessary for continued success of efficiently and fairly issuing licenses, permits, tags, and certificates of registration.

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

Natural Resources
Wildlife Resources
Suite 2110
1594 West North Temple
PO Box 146301
Salt Lake City, UT 84114-6301, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at (801) 538-4707, by FAX at (801) 538-4709, or Internet E-mail at nrdwr.dsundell@email.state.ut.us.

AUTHORIZED BY: John Kimball, Director

EFFECTIVE: 11/30/2000

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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

Environmental Quality
Drinking Water
No. 23159 (AMD): R309-301 (Changed to R309-300). Required Certification Rules for Water Supply Operators in the State of Utah.
Published: October 1, 2000
Effective: November 20, 2000

Water Quality
No. 23163 (AMD): R317-4. Onsite Wastewater Systems.
Published: October 1, 2000
Effective: December 1, 2000

Health
Epidemiology and Laboratory Services, Environmental Services
No. 23173 (AMD): R392-302. Design, Construction, and Operation of Public Pools.
Published: October 15, 2000
Effective: November 29, 2000

Human Services
Substance Abuse
No. 23168 (AMD): R544-4. Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders.
Published: October 15, 2000
Effective: November 20, 2000

Natural Resources
Oil, Gas and Mining; Coal
No. 23170 (AMD): R645-105. Blaster Training, Examination and Certification.
Published: October 15, 2000
Effective: November 17, 2000

No. 23171 (AMD): R645-301-700. Hydrology.
Published: October 15, 2000
Effective: November 17, 2000

No. 23172 (AMD): R645-400. Inspection and Enforcement: Division Authority and Procedures.
Published: October 15, 2000
Effective: November 17, 2000

Public Safety
Law Enforcement and Technical Services, Regulatory Licensing
No. 23033 (CPR): R724-10. Regulation of Bail Bond Agents.
Published: October 15, 2000
Effective: November 16, 2000

Public Service Commission
Administration
No. 23015 (AMD): R746-100-3. Pleadings.
Published: August 1, 2000
Effective: November 27, 2000

Tax Commission
Auditing
DAR correction notice: In the December 1, 2000, *Bulletin*, a correction notice was printed for an amendment on R865-20T-11. It corrected the DAR No. to 23130. However, in the reprint of the notice information it was listed as No. 2<u>3</u>230. The correct DAR No. is 23130.

End of the Notices of Rule Effective Dates Section

RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2000, including notices of effective date received through December 1, 2000, the effective dates of which are no later than December 15, 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/).