UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed April 16, 2013, 12:00 a.m. through May 01, 2013, 11:59 p.m.

Number 2013-10
May 15, 2013

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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63G-3-402.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: http://www.rules.utah.gov/

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit http://www.rules.utah.gov/publicat/digest.htm for additional information.

Division of Administrative Rules, Salt Lake City 84114

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
I. Utah. Office of Administrative Rules.

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348.792'025--DDC 85-643197

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EDITOR'S NOTES

Delay in Publication of the Legislative Nonreauthorization Notice

Section 63G-3-502 provides that "every agency rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature." To do this, the Legislature's Administrative Rules Review Committee prepares omnibus legislation each year. As part of this legislation, the Legislature may elect not to reauthorize a rule or a part of a rule down to the complete paragraph level. When this occurs, the Division of Administrative Rules files a Notice of Legislative Nonreauthorization to document the Legislature's action.

During the 2013 General Session, the Legislature passed H.B. 256, Reauthorization of Administrative Rules (Chapter 355, Laws of Utah 2013). That bill, signed by the Governor and effective May 1, 2013, reauthorized all administrative rules except Subsection R592-2-7(2) -- part of the Insurance, Title and Escrow Commission rule on "Title Insurance Administrative Hearings and Penalty Imposition" regarding the "Imposition of Penalties".

Because the bill took effect on May 1, the Division should have filed the Notice of Legislative Nonreauthorization on May 1. However, because of a clerical error, the Division did not file the Notice of Legislative Nonreauthorization until May 2, 2013 (DAR No. 37588). This means that the Notice of Legislative Nonreauthorization that should have appeared in the May 15, 2013, issue of the Bulletin, will be published in the June 1, 2013, issue.

This delay in publication has no effect on the rule. The Legislature's action in H.B. 256 removed Subsection R592-2-7(2) from the Utah Administrative Code effective May 1, 2013.

The Division regrets any confusion caused by its delayed publication of the Notice of Legislative Nonreauthorization.

Questions about the Legislature's reauthorization of administrative rules may be addressed to Ken Hansen at 801-538-3777.

End of the Editor's Notes Section

SPECIAL NOTICES

Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for June 2013 Medicaid Rate Changes

Effective June 1, 2013, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: http://health.utah.gov/medicaid/stplan/bcrp.htm

End of the Special Notices Section

NOTICES OF
PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between April 16, 2013, 12:00 a.m., and May 01, 2013, 11:59 p.m. are included in this, the May 15, 2013 issue of the *Utah State Bulletin*.

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

Following the **Rule Analysis**, the text of the **Proposed Rule** is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (**. . . . . .**) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. If a **Proposed Rule** is too long to print, the Division of Administrative Rules will include only the **Rule analysis**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **Proposed Rules** published in this issue of the *Utah State Bulletin* until at least June 14, 2013. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **Rule Analysis**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **Proposed Rule**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through September 12, 2013, the agency may notify the Division of Administrative Rules that it wants to make the **Proposed Rule** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **Change in Proposed Rule** in response to comments received. If the Division of Administrative Rules does not receive a **Notice of Effective Date** or a **Change in Proposed Rule**, the **Proposed Rule** lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on **Proposed Rules**. *Comment may be directed to the contact person identified on the* Rule Analysis *for each rule.*

Proposed Rules are governed by Section 63G-3-301; Rule R15-2; and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Administrative Services, Finance
R25-5
Payment of Per Diem to Boards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37558
FILED: 04/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed change clarifies that "per diem" payments to board members for attendance at official meetings are taxable and must be paid through the payroll system.

SUMMARY OF THE RULE OR CHANGE: The board member shall pay taxes if they are eligible to receive the per diem.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The effect to the state budget will be negligible. There may be some cost savings if agencies are more careful to ensure that board members who are otherwise compensated are not reimbursed twice.
♦ LOCAL GOVERNMENTS: This rule amendment applies only to monies paid to board members and employees of state government and higher education and therefore, will have no impact on local government.
♦ SMALL BUSINESSES: This rule amendment applies only to monies paid to board members and employees of state government and higher education and therefore, will have not impact on small business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment applies only to monies paid to board members and employees of state government and higher education and therefore, will not impact any persons outside of state government and higher education.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be minimal compliance costs for staffing expenses to approve and process per diem payments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are for clarification purposes and have no impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FINANCE
ROOM 2110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.
R25-5. Payment of Per Diem to Boards.
R25-5-1. Purpose.

The purpose of this rule is to establish the procedures for payment of per diem and travel expenses to defray the costs for attendance at an official meeting of a board by an officer or employee who is a member.

R25-5-2. Authority.

This rule is established pursuant to Section 63A-3-106, which authorizes the Director of Finance to make rules establishing per diem rates.

R25-5-3. Definitions.

All terms are as defined in Section 63A-3-106(1), except as follows:

(1) "Finance" means the Division of Finance.
(2) "Per diem" means an allowance paid daily.
(3) "Rate" means an amount of money.
(4) "Independent Corporation Board" means the board of directors of any independent corporation subject to Section 63E Chapter 2 that is subject to this rule by its authorizing statute.

R25-5-4. Rates.

(1) Each member of a board within state government shall receive a taxable $60 per diem for each official meeting attended that lasts up to four hours and a taxable $90 per diem for each official meeting that is longer than four hours.

(a) These rates are applicable to an officer or employee of the executive branch, except as provided under subsection (1)(b);

(b) These rates are applicable to an officer or employee of higher education unless higher education pays the costs of the per diem.

(2) Travel expenses shall also be paid to board members in accordance with Rule R25-7.

(3) Members may decline to receive per diem and/or travel expenses for their services.

(4) Upon approval by Finance, members of an independent corporation board may receive per diem, at rates exceeding those established in Subsection R25-5-4(1), for each meeting attended as

part of their official duties and for reasonable preparation associated with meetings of the full board or the board's subcommittees.

R25-5-5. Governmental Employees.

(1) A member of a board may not receive the taxable per diem in R25-5-4(1) or travel expenses if the member is being compensated as an officer or employee of a governmental entity, including the State, while performing the member's service on the board.

Governmental employee board members attending official meetings held at a time other than their normal working hours, who receive no compensation or leave (such as comp time) for the additional hours of the meetings may receive the taxable per diem in R25-5-4(1).

(2) Travel expenses related to the attendance of official board meetings for which a governmental employee serving on the board is not otherwise reimbursed may also be paid to the employee in accordance with Rule R25-7.

(3) Governmental employees may decline to receive per diem and/or travel expenses for their services.

R25-5-6. Payment of Per Diem.

All board members are required to be paid their per diem through the payroll system in order to calculate and withhold the appropriate taxes.

KEY: per diem allowance, rates, state employees, boards
Date of Enactment or Last Substantive Amendment: [~~June 23, 2009~~|2013
Notice of Continuation: April 15, 2013
Authorizing, and Implemented or Interpreted Law: 63A-3-106

Administrative Services, Finance
R25-7
Travel-Related Reimbursements for State Employees

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 37556
FILED: 04/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Because of an increase in gas prices and food and lodging-related expenses, the Division has determined that some reimbursement rates should also increase for in-state travel. The out-of-state travel meal per diems will decrease to avoid exceeding federal meal reimbursement rates.

SUMMARY OF THE RULE OR CHANGE: The rule increases reimbursement rate for mileage, lodging, and food for in-state travel. Decreases meal per diem for out-of state travel.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106 and Section 63A-3-107

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will potentially be an increased cost to the state as some reimbursements are increasing. However, the agency cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.
♦ LOCAL GOVERNMENTS: There will not be costs to local governments because the rule only governs reimbursements by the state to individuals traveling on state business.
♦ SMALL BUSINESSES: Small business may see an increase in revenue. However, the agency cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals eligible for reimbursement will see an increase in their reimbursement amounts for in-state travel, or a decrease in reimbursement amounts for out-of-state travel. However, the agency cannot determine exactly what the increase or decrease will be as that depends on the amount of travel by individuals eligible for reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the amendment only changes reimbursement rates and does not require any new action on the part of persons applying for reimbursements, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and warranted. Small business may see an increase in revenue. However, the agency cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
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FINANCE
ROOM 2110 STATE OFFICE BLDG
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SALT LAKE CITY, UT 84114-1201
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THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules [~~establishing~~]governing meeting per diem [~~rates~~]and travel expenses for board members attending official meetings.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

[~~(5)~~](6) "Per diem" means an allowance paid daily.

[~~(6)~~](7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

[~~(7)~~](8) "Rate" means an amount of money.

[~~(8)~~](9) "Reimbursement" means money paid to compensate an employee for money spent.

[~~(9)~~](10) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is [~~$38.00~~]$39.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	[~~$9.00~~]$10.00
Lunch	$13.00
Dinner	$16.00
Total	[~~$38.00~~]$39.00

(b) The daily travel meal allowance for out-of-state travel is [~~$47.00~~]$46.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	[~~$23.00~~]$22.00
Total	[~~$47.00~~]$46.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, San Diego, [~~Orlando, Atlanta, ~~]Baltimore, and Arlington), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to $62 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the $62 premium allowance as follows:

(i) If breakfast is provided deduct $14, leaving a premium allowance for lunch and dinner of actual up to $48.

(ii) If lunch is provided deduct $19, leaving a premium allowance for breakfast and dinner of actual up to $43.

(iii) If dinner is provided deduct $29, leaving a premium allowance for breakfast and lunch of actual up to $33.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed [~~at the reasonable,~~]the actual meal cost, with original receipts[-],not to exceed the United States Department of State Meal and Incidental Expenses (M&IE) rate for their location.

(a) The traveler may combine the reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:00-5:59	6:00-11:59	12:00-5:59	6:00-11:59
*B, L, D	*L, D	*D	*no meals
In-State			
[~~$38.00~~]$39.00	$29.00	$16.00	$0
Out-of-State			
[~~$47.00~~]$46.00	[~~$37.00~~]$36.00	[~~$23.00~~]$22.00	$0

*B=Breakfast, L=Lunch, D=Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:00-5:59	6:00-11:59	12:00-6:59	7:00-11:59
*no meals	*B	*B, L	*B, L, D
In-State			
$0	[~~$9.00~~]$10.00	$22.00	[~~$38.00~~]$39.00
Out-of-State			
$0	$10.00	$24.00	[~~$47.00~~]$46.00

*B=Breakfast, L=Lunch, D=Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns [~~after~~]at 7 p.m. or later.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meals [~~Per Diem~~]for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to $65 per night for single occupancy plus tax except as noted in the table below:

TABLE 5

Cities with Differing Rates

[~~American Fork~~	~~$75.00 plus tax~~
~~Beaver~~	~~$70.00 plus tax~~
~~Blanding~~	~~$75.00 plus tax~~
~~Bryce~~	~~$70.00 plus tax~~
~~Cedar City~~	~~$70.00 plus tax~~
~~Delta~~	~~$70.00 plus tax~~
~~Ephraim~~	~~$70.00 plus tax~~
~~Fillmore~~	~~$70.00 plus tax~~
~~Green River~~	~~$75.00 plus tax~~
~~Heber City / Midway~~	~~$90.00 plus tax~~
~~Kanab~~	~~$75.00 plus tax~~
~~Layton~~	~~$75.00 plus tax~~
~~Logan~~	~~$75.00 plus tax~~
~~Moab~~	~~$95.00 plus tax~~
~~Monticello~~	~~$70.00 plus tax~~
~~Nephi~~	~~$70.00 plus tax~~
~~Ogden~~	~~$75.00 plus tax~~
~~Park City~~	~~$90.00 plus tax~~
~~Price~~	~~$75.00 plus tax~~
~~Provo / Orem / Lehi~~	~~$75.00 plus tax~~

~~Roosevelt~~	~~$85.00 plus tax~~
~~Salt Lake City Metropolitan Area (Draper to Centerville), Tooele~~	~~$95.00 plus tax~~
~~Springville~~	~~$70.00 plus tax~~
~~St George / Washington / Springdale~~	~~$75.00 plus tax~~
~~Torrey~~	~~$70.00 plus tax~~
~~Tremonton~~	~~$90.00 plus tax~~
~~Vernal~~	~~$90.00 plus tax~~
~~All Other Utah Cities~~	~~$65.00 plus tax~~
]Blanding	$75.00 plus tax
Bryce	$70.00 plus tax
Cedar City	$75.00 plus tax
Delta	$70.00 plus tax
Ephraim	$70.00 plus tax
Fillmore	$75.00 plus tax
Green River	$75.00 plus tax
Kanab	$75.00 plus tax
Layton	$75.00 plus tax
Logan	$75.00 plus tax
Moab	$95.00 plus tax
Monticello	$70.00 plus tax
Nephi	$70.00 plus tax
Ogden	$75.00 plus tax
Panguitch	$70.00 plus tax
Park City/Heber City/Midway	$90.00 plus tax
Price	$75.00 plus tax
Provo/Orem/Lehi/ American Fork/Springville	$75.00 plus tax
Richfield	$70.00 plus tax
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	$95.00 plus tax
St. George/Washington/Springdale	$80.00 plus tax
Torrey	$75.00 plus tax
Tremonton	$90.00 plus tax
Vernal/Roosevelt/Ballard	$95.00 plus tax
All Other Utah Cities	$65.00 plus tax

(3) State employees traveling less than 50 miles [~~in excess of their normal office commute~~]from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(iv) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips and transportation costs.

(a) Tips for maid service, doormen, and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above [~~$20.00 and for all airport parking.~~]$19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) [~~Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a~~]The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of $20 or more.

(3) Registration should be paid in advance on a state warrant.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls made during stays of five nights or more.

(5) Allowances for personal telephone calls made while out of town on state business overnight will be based on the number of nights away from home.

(a) Four nights or less - actual amount up to $2.50 per night (documentation is not required for personal phone calls made during stays of four nights or less)

(b) Five to eleven nights - actual amount up to $20.00

(c) Twelve nights to thirty nights - actual amount up to $30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the economy lot parking rate at the airport they are flying out of.[~~long-term parking rate.~~]

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of $20 or more.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or [~~55.5~~]56.5 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at [~~55.5~~]56.5 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Exceptions must be approved in writing by the Director of Finance.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at [~~55.5~~]56.5 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation
Date of Enactment or Last Substantive Amendment: [~~July 1, 2012~~]2013
Notice of Continuation: April 15, 2013
Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

Administrative Services, Finance
R25-8
Overtime Meal Allowance

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37557
FILED: 04/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to determine that the Director or designee authorizes the meal allowance, and meals must be paid through the payroll system to withhold the appropriate tax.

SUMMARY OF THE RULE OR CHANGE: Allowances for meals received by employees required to work hours in excess of regularly scheduled hours must be paid through the payroll system to withhold the appropriate tax.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-103

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Amending the rule does not change the impact of the overtime meal allowance on the state budget.
♦ LOCAL GOVERNMENTS: The rule only applies to state agencies and state employees and, therefore, it will have no impact on local government.
♦ SMALL BUSINESSES: This rule applies only to state employees, therefore, it will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals eligible for an overtime meal allowance must be paid through the payroll system to have the appropriate tax withheld.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the reimbursement will be paid through the payroll system, tax will be withheld from the reimbursement. Appropriate tax would be the compliance cost for affected person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance Director. The amendment to Rule R25-8 applies only to state agencies and state employees and will have no impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FINANCE
ROOM 2110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.
R25-8. Overtime Meal Allowance.
R25-8-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay meal allowances to state employees required to work in excess of regularly scheduled hours during a 24-hour period.

R25-8-2. Authority.

This rule is established pursuant to Subsection 63A-3-103(1), which authorizes the Division of Finance to define fiscal procedures relating to approval and allocation of funds.

R25-8-3. Definitions.

(1) "Overtime Meal allowance" means a sum of money given to state employees to pay for meals which may be authorized when work hours are in excess of regularly scheduled hours during a 24-hour period.

(2) "Department" means all executive departments of state government.

(3) "Finance" means the Division of Finance.

(4) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(5) "Rate" means an amount of money.

(6) "State employee" means any person who is paid on the state payroll system.

R25-8-4. Allowance.

(1) A state employee required to work in excess of regularly scheduled hours may be authorized by his department to receive a taxable meal allowance up to $10 during a 24-hour period if:

(a) The employee is not on travel status.

(b) The total hours worked during the 24-hour period shall be three hours or more in excess of the regularly scheduled hours.

(c) The allowance is not considered an absolute right of the employee, and is authorized at the discretion of the [~~d~~]Department [~~head~~]Director or [~~his~~]designee.

(d) The allowance may not be given in addition to any other meal allowance or per diem.

(e) The Employee Reimbursement/Earnings Request, form FI 48, should be completed and approved for the payment of the meal allowance. These overtime meal allowances must be paid through the payroll system in order to calculate and withhold the appropriate taxes.

KEY: finance, rates, state employees, allowance
Date of Enactment or Last Substantive Amendment: [~~July 1, 2008~~]2013
Notice of Continuation: April 15, 2013
Authorizing, and Implemented or Interpreted Law: 63A-3-103

Agriculture and Food, Animal Industry
R58-1
Admission and Inspection of Livestock, Poultry and Other Animals

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37529
FILED: 04/17/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make additional changes to a proposed rule (R58-1) before the effective date. (DAR NOTE: The previous rule amendment to Rule R58-1 is under DAR No. 37262 in the March 1, 2013, issue of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Based on a comment received during the comment period, language has been added to Section R58-1-14 that refers to the importation of aquatic animals in Rule R58-17. In Section R58-1-16, the single cervical tuberculin test was removed as the specific test required for tuberculosis testing based on the approval of an additional tuberculosis test. Also in Section R58-1-16, two individual forms of identification must be listed on the Certificate of Veterinary Inspection which is in compliance with the federal chronic wasting disease (CWD) rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-2-2(1)(c)(i) and Subsection 4-2-2(1)(j) and Title 4, Chapter 31

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Changes to Rule R58-1 will not change the state budget. Although, by not requiring import permits on exotic animals, the Division of Animal Industry personnel will be freed up to conduct other duties more efficiently.
♦ LOCAL GOVERNMENTS: This rule has only affected local government when a case was brought before a judge. This has only occurred once in the last ten years so we do not expect this rule change to affect local government.
♦ SMALL BUSINESSES: The proposed change may actually decrease the expense it costs for importers of cervids into Utah by decreasing the amount of handling an individual elk will need to complete the tuberculosis testing requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed change may actually decrease the expense it costs for importers of cervids into Utah by decreasing the amount of handling an individual elk will need to complete the tuberculosis testing requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs may be reduced for importers of cervids into Utah by reducing the amount of handling the individual animal must go through for the current single cervical tuberculin test requirement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to Rule R58-1 are the result of the approval of a new tuberculosis test for cervids and public comments that were received during the comment period.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at wframpton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Leonard Blackham, Commissioner

R58. Agriculture and Food, Animal Industry.
R58-1. Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals.
R58-1-10. Poultry.

(1) All poultry and hatching eggs being imported into Utah must meet the following requirements:

(a) All poultry and hatching eggs must have an import permit from the Department.

(b) All poultry and hatching eggs entering Utah must have a Certificate of Veterinary Inspection or a National Poultry Improvement Plan VS Form 9-3.

(c) All poultry and hatching eggs shall originate from flocks or hatcheries that have a Pullorum-Typhoid Clean rating given by the official state agency of the National Poultry Improvement Plan (NPIP) of the state, or

(d) All poultry entering Utah from a flock or hatchery which does not have a clean rating through NPIP certification must have been tested negative for Pullorum-Typhoid within the last 30 days.

R58-1-12. Psittacine and Passerine Birds and Raptors.

(1) No psittacine or passerine birds or raptors shall be shipped into the State of Utah unless an official Certificate of Veterinary Inspection accompanies the birds.

(2) The number and kinds of birds to be shipped into Utah, their origin, date to be shipped and destination must be listed on the Certificate of Veterinary Inspection.

R58-1-14. Exotic Animals.

(1) It is unlawful for any person to import into the State of Utah any species of exotic animal that is prohibited for importation or possession as listed in Utah Administrative Code R657-3.

(2) All exotic animals (birds, mammals, and reptiles) must be accompanied by an official Certificate of Veterinary Inspection.

(3) All aquatic animals (fish, mollusk, crustacean, or amphibians) must fulfill all requirements of Utah Administrative Code R58-17 prior to importation into the State of Utah.

R58-1-16. Captive Cervidae.

(1) All captive cervidae entering Utah must meet the following requirements:

(a) No captive elk will be imported into Utah unless the destination premises is licensed with the Utah Department of Agriculture and Food.

(b) No captive caribou or fallow deer will be imported into Utah unless a Certificate of Registration (COR) has been obtained from the Utah Division of Wildlife Resources.

(c) No captive cervidae will be allowed to be imported into Utah that have originated from or have ever been east of the 100 degree meridian.

(d) All captive elk imported into Utah must meet the genetic purity requirement as referenced in Title 4, Chapter 39, Section 301, Utah Code Unannotated.

(e) All captive elk must meet the following Chronic Wasting Disease (CWD) requirements:

(i) Elk must come from a state with a USDA approved herd certification program.

(ii) Elk must originate from a herd that is not affected with or is a trace back or forward herd for CWD.

(iii) Elk must originate from a herd that has had a CWD herd surveillance program for 5 years prior to movement.

(f) All captive cervidae must be permanently identified using either a microchip or tattoo.

(g) All captive cervidae must have an import permit from the Department.

(h) All captive cervidae must have an official Certificate of Veterinary Inspection showing the following:

(i) A negative tuberculosis[~~single cervical tuberculin~~] test within 60 days of import.

(ii) Negative Brucella abortus test results from a single sample that has been tested by two USDA approved tests.

(iii) Two forms of individual [~~A~~]animal identification.

(iv) A statement the that animals listed on the certificate are not known to be infected with Johne's Disease (Paratuberculosis) or Malignant Catarrhal Fever and have never been east of the 100 degree meridian.

KEY: disease control, import requirements
Date of Enactment or Last Substantive Amendment: 2013
Notice of Continuation: January 18, 2012
Authorizing, and Implemented or Interpreted Law: 4-2-2(1)(j)

Commerce, Occupational and Professional Licensing
R156-75
Genetic Counselors Licensing Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37533
FILED: 04/22/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Genetic Counselor Licensing Board reviewed the rule and determined that it was necessary to make the following amendments: 1) modify the length of time individuals may hold a temporary license; 2) eliminate the possibility of issuance of a second temporary license; 3) decrease the amount of continuing education genetic counselors must complete as a requirement for license renewal; 4) further define unprofessional conduct; and 5) make grammatical and stylistic changes.

SUMMARY OF THE RULE OR CHANGE: In Section R156-75-302b, all temporary licenses currently expire on December 31 immediately following the next available American Board of Genetic Counseling (ABGC) examination date. Individuals have only one opportunity per year to take the ABGC exam. For this reason, the rule allows them to obtain the temporary license a second time. Beginning in 2014, individuals will have two opportunities per year to take the exam. This upcoming increase in exam availability led the Board to recommend a rule amendment to decrease the length of time individuals may hold temporary licenses to 18 months and to not allow individuals to obtain a temporary license a second time. In Section R156-75-304, currently, genetic counselors must complete 50 hours of continuing education during every renewal cycle. In an effort to decrease regulation and to be more consistent with requirements for national ABGC certification renewal, the Board recommends this requirement be decreased to 40 hours. In Section R156-75-502, the proposed amendment makes it unprofessional conduct for a genetic counselor to fail to provide general supervision to a temporary genetic counselor when under their supervision.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-75-302(2) and Subsection 58-75-303(2)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ LOCAL GOVERNMENTS: The proposed amendments only impact genetic counselors and temporary genetic counselors. As a result, the proposed amendments do not apply to local governments.

♦ SMALL BUSINESSES: The proposed amendments only impact genetic counselors and temporary genetic counselors. Small businesses that employ temporary genetic counselors

may experience some cost impact due to the inability to apply for the temporary license a second time; however, the extent of the cost impact is insignificant because cost impact is offset by the increase in availability of the exam. Small businesses that employ genetic counselors may also experience a cost savings due to the decrease in the number of continuing education hours required for license renewal. The cost of continuing education for genetic counselors ranges from $25 to $40 for every 10 hours of continuing education, plus registration and transportation costs if applicable.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only impact genetic counselors and temporary genetic counselors. Some genetic counselors may experience cost savings due to the decrease in the amount of continuing education required for license renewal. Under the proposed amendment, genetic counselors are required to complete 10 fewer hours of continuing education. As a result, some genetic counselors will save money they would have otherwise spent in order to complete 10 additional hours of continuing education. The cost of continuing education for genetic counselors ranges from $25 to $40 for every 10 hours of continuing education, plus registration and transportation costs if applicable. Many licensees already complete 50 hours of continuing education every two years in order to maintain their ABGC certification. Temporary genetic counselors may experience some cost impact due to the inability to apply for the temporary license a second time; however, the extent of cost impact is insignificant because it is likely offset by the increase in availability of the exam.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only impact genetic counselors and temporary genetic counselors. Some genetic counselors may experience cost savings due to the decrease in the amount of continuing education required for license renewal. Under the proposed amendment, genetic counselors are required to complete 10 fewer hours of continuing education. As a result, some genetic counselors will save money they would have otherwise spent in order to complete 10 additional hours of continuing education. The cost of continuing education for genetic counselors ranges from $25 to $40 for every 10 hours of continuing education, plus registration and transportation costs if applicable. Many licensees already complete 50 hours of continuing education every two years in order to maintain their ABGC. Temporary genetic counselors may experience some cost impact due to the inability to apply for the temporary license a second time; however, the extent of cost impact is insignificant because it is likely offset by the increase in availability of the exam.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment requires a person to test and qualify for a non-temporary genetic counselor license at or before the time the temporary license expires, rather than applying to renew the temporary license. Affected businesses will incur the associated licensing costs at an earlier date than they would under the existing rule, but the actual cost of licensing remains unchanged. The proposed amendment also reduces the number of continuing education hours that are required to renew a genetic counselor license. Affected businesses will experience nominal savings from this reduction. Finally, the filing establishes that it is unprofessional conduct for a licensed genetic counselor to fail to supervise an affiliated individual holding a temporary license. No fiscal impact to businesses is anticipated from this change.

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

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/23/2013 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-75. Genetic Counselors Licensing Act Rule.
R156-75-302b. Qualifications for Licensure - Temporary License.

In accordance with Subsection 58-75-302(2), the requirements for temporary licensure are established as follows:

(1) An applicant shall meet all [~~the~~]qualifications for licensure as established in Subsection 58-75-302(1) with the exception of Subsection 58-75-302(1)(e), and have active candidate status conferred by the ABGC.

(2) An individual practicing under the authority of a temporary license [~~must~~]shall practice under the general supervision of a licensed genetic counselor or a licensed physician certified in clinical genetics by the American Board of Medical Genetics.

(3) [~~In accordance with~~]A temporary license issued under Subsection 58-1-303(1)(a)[~~, a temporary license~~] shall expire on the date a non-temporary license is issued or 18 months after issuance of the temporary license, whichever is earlier. An individual may apply for and obtain a temporary license only one time and it shall

not be renewed or extended[~~December 31 immediately following the next available ABGC certification exam date. If the applicant fails the first sitting of the ABGC certification exam, the applicant may reapply for a second temporary license~~].

(4) A temporary license shall not be issued if the applicant has failed the ABGC certification examination more than once.

R156-75-304. Continuing Education.

(1) In accordance with Subsections 58-1-203(1)(g), 58-1-308(3)(b) and Section 58-75-303, there is created a continuing education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 75.

(2) Continuing education shall consist of [~~50~~]40 hours ([~~5~~]4 CEU[~~'~~]s) in each preceding two year licensing cycle and [~~must~~]shall be approved for recertification purposes by the ABGC.

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

(4) A licensee requesting a waiver of the continuing education requirement shall comply with requirements established by rule in R156-1-308[~~who documents circumstances which prevent the licensee from meeting the continuing professional education requirements established under this section may apply to be excused from the requirement for a period of up to two years. It is the responsibility of the licensee to document the reasons and justify why the requirement could not be met~~].

R156-75-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any provision of the Code of Ethics established by the National Society of Genetic Counselors (NSGC), revised January 2006, which is hereby adopted and incorporated by reference; and

(2) if licensed as a genetic counselor and contracted to provide general supervision to a temporary genetic counselor, failing to provide such supervision as defined in Subsection R156-75-102(2).

KEY: licensing, occupational licensing, genetic counselors
Date of Enactment or Last Substantive Amendment: [~~July 9, 2012~~]2013
Notice of Continuation: October 20, 2011
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-75-302(2); 58-75-303(2)

Commerce, Real Estate
R162-2f
Real Estate Licensing and Practices Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37530
FILED: 04/17/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update and refine the educational requirements for school and course certification.

SUMMARY OF THE RULE OR CHANGE: The changes: 1) specify and define which instructional methods are acceptable for education credit; 2) clarify the information a real estate school must provide the Division to obtain a certification; 3) require real estate schools to notify students of the possibility of obtaining an education waiver from the Division; 4) update requirements for course certification including a school's description of its student grievance process and its course content regarding current statutes and rules; and 5) remove the requirement of preparing, administering, and submitting student evaluations to the Division.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1) and Subsection 61-2f-203(1)(e) and Subsection 61-2f-206(3)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This filing does not create any new programs or standards the Division will be required to implement or enforce. The Division already has the staff and budget necessary to review applications for school and course certification, and the proposed amendments will not increase the costs of this review. Therefore, no fiscal impact to the state budget is anticipated.
♦ LOCAL GOVERNMENTS: Local governments are not required to comply with or enforce the rules governing the real estate industry. Therefore, no fiscal impact to local government will result from this filing.
♦ SMALL BUSINESSES: Real estate schools and course providers that find it necessary to update or modify current disclosures and course content might experience costs. These costs will vary among providers and cannot be estimated, but should be minimal on consideration that education providers routinely include in their budgets costs for reviewing and updating their course offerings. In addition, any costs experienced will be offset, at least to a degree, by savings realized from the removal of the current requirement under which providers send to the Division student evaluations of each course taught.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Real estate schools and providers are the only persons affected by this filing. Therefore, no fiscal impact to other persons will result from this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Real estate schools and course providers that find it necessary to update or modify current disclosures and course content might experience costs. These costs will vary among providers and cannot be estimated, but should be minimal on consideration that education providers routinely include in their budgets costs for reviewing and updating their course offerings. In addition, any costs experienced will be offset, at least to a degree, by savings realized from the removal of the current requirement under which providers send to the Division student evaluations of each course taught.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As explained in the rule summary, any costs to businesses resulting from compliance with course curriculum requirements are anticipated to be minimal, and will likely be offset by savings that result form the Division's repealing language that currently requires education providers to send to the Division student evaluations of each course taught.

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

COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ben Jensen by phone at 801-530-6603, by FAX at 801-526-4387, or by Internet E-mail at bjensen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Jonathan Stewart, Director

R162. Commerce, Real Estate.
R162-2f. Real Estate Licensing and Practices Rules.
R162-2f-102. Definitions.

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and

(c) affiliates with a principal brokerage.

(2) "Advertising" means solicitation through:

(a) newspaper;

(b) magazine;

(c) Internet;

(d) e-mail;

(e) radio;

(f) television;

(g) direct mail promotions;

(h) business cards;

(i) door hangers;

(j) signs; or

(k) any other medium.

(3) "Affiliate":

(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and

(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.

(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(6) "Brokerage" means a real estate sales or a property management company.

(7) "Brokerage record" means any record related to the business of a principal broker, including:

(a) record of an offer to purchase real estate;

(b) record of a real estate transaction, regardless of whether the transaction closed;

(c) licensing records;

(d) banking and other financial records;

(e) independent contractor agreements;

(f) trust account records, including:

(i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and

(ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and

(g) records of the brokerage's contractual obligations.

(8) "Business day" is defined in Subsection 61-2f-102(3).

(9) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or

(b) function as an instructor for courses approved for prelicensing education or continuing education.

(10) "Commission" means the Utah Real Estate Commission.

(11) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:

(a) core: topics identified in Subsection R162-2f-206c(5)(c); or

(b) elective: topics identified in Subsection R162-2f-206c(5)(e).

(12) "Correspondence course" means a self-paced real estate course that:

(a) is not distance or traditional education; and

(b) fails to meet real estate educational course certification standards because:

(i) it is primarily student initiated; and

(ii) the interaction between the instructor and student lacks substance and/or is irregular.

[~~(12)~~](13) "Day" means calendar day unless specified as "business day."

[~~(13)~~](14)(a) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including the following:

(i)[~~(a)~~] computer conferencing;

(ii)[~~(b)~~] satellite teleconferencing;

(iii)[~~(c)~~] interactive audio;

(iv)[~~(d)~~] interactive computer software;

(v)[~~(e)~~] Internet-based instruction; and

(vi)[~~(f)~~] other interactive online courses.

(b) "Distance education" does not include home study and correspondence courses.

[~~(14)~~](15) "Division" means the Utah Division of Real Estate.

[~~(15)~~](16) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.

[~~(16)~~](17) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:

(a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or

(b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.

[~~(17)~~](18) "Guaranteed sales plan" means:

(a) a plan in which a seller's real estate is guaranteed to be sold; or

(b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:

(i) in the specified period of a listing; or

(ii) within some other specified period of time.

[~~(18)~~](19) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:

(a) voluntarily, with the assent of the license holder; or

(b) involuntarily, without the assent of the license holder.

[~~(19)~~](20) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.

[~~(20)~~](21) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:

(a) subject to the terms of a limited agency agreement; and

(b) with the informed consent of all principals to the transaction.

[~~(21)~~](22) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.

(23)(a) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to Subsection R162-2f-206c(1)(b).

(b) "Non-certified education" does not include:

(i) home study courses; or

(ii) correspondence courses.

(24)[~~(22)~~] "Nonresident applicant" means a person:

(a) whose primary residence is not in Utah; and

(b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.

(25)[~~(23)~~] "Principal brokerage" means the main real estate or property management office of a principal broker.

(26)[~~(24)~~] "Principal" in a transaction means an individual who is represented by a licensee and may be:

(a) the buyer or lessee;

(b) an individual having an ownership interest in the property;

(c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or

(d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.

(27) "Provider" means an individual or business that is approved by the division to offer continuing education.

(28)[~~(25)~~] "Property management" is defined in Subsection 61-2f-102(19).

(29)[~~(26)~~] "Registration" means authorization from the division to engage in the business of real estate as:

(a) a corporation;

(b) a partnership;

(c) a limited liability company;

(d) an association;

(e) a dba;

(f) a professional corporation;

(g) a sole proprietorship; or

(h) another legal entity of a real estate brokerage.

(30)[~~(27)~~] "Reinstatement" is defined in Subsection 61-2f-102(22).

(31)[~~(28)~~] "Reissuance" is defined in Subsection 61-2f-102(23).

(32)[~~(29)~~] The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees shall[~~ean~~] submit [~~certain~~]licensing information to the division.

(33)[~~(30)~~] "Renewal" is defined in Subsection 61-2f-102(24).

(34)[~~(31)~~] "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.

(35)[~~(32)~~] "School" means:

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college or vocational-technical school;

(c) any local real estate organization that has been approved by the division[~~commission~~] as a school; or

(d) any proprietary real estate school.

(36)[~~(33)~~] "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.

(37)[~~(34)~~] "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:

(a) mortgage brokers;

(b) mortgage lenders;

(c) loan originators;
(d) title service providers;
(e) attorneys;
(f) appraisers;
(g) providers of document preparation services;
(h) providers of credit reports;
(i) property condition inspectors;
(j) settlement agents;
(k) real estate brokers;
(l) marketing agents;
(m) insurance providers; and
(n) providers of any other services for which a principal or investor will be charged.

(38)[~~(35)~~] "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

(39)[~~(36)~~] "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(26).

R162-2f-206a. Certification of Real Estate School.

(1) Prior to offering real estate prelicensing or continuing education, a school shall:

(a) first, obtain division approval of the school name; and

(b) second, certify the school with the division pursuant to this Subsection (2).

(2) To certify, a school applicant shall, at least 90 days prior to teaching any course, prepare and supply the following information to the division:

(a) contact information, including:

(i) name, phone number, email address, and address of the physical facility;

(ii) name, phone number, email address, and address of each school director;

(iii) name, phone number, email address, and address of each school owner; and

(iv) an e-mail address where correspondence will be received by the school;

(b) evidence that the school directors and owners meet the character requirements outlined in Subsection R162-2f-201(1) and the competency requirements outlined in Subsection R162-2f-201(2);

(c) evidence that the school name, as approved by the division pursuant to this Subsection (1)(a), is registered with the Division of Corporations and Commercial Code as a real estate education provider;

(d) school description, including:

(i) type of school; and

(ii) description of the school's physical facilities;

(e) list of courses to be offered, including the following:

(i) a statement of whether each course is a prelicensing or continuing education course; and

(ii) as to a continuing education course, whether it is designed to qualify as fulfilling all or part of the core curriculum requirement for new agents;

(f) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(g) proof that each instructor is:

(i) certified by the division;

(ii) qualified as a guest lecturer by having:

(A) requisite expertise in the field; and

(B) approval from the division; or

(iii) exempt from certification under Subsection R162-2f-206d(4);

(h) schedule of courses offered, including the days, times, and locations of classes;

(i) statement of attendance requirements as provided to students;

(j) refund policy as provided to students;

(k) disclaimer as provided to students and as specified in Subsection (3)(c);

(l) criminal history disclosure statement as provided to students and as specified in Subsection (3)(d);

(m) disclosure, as specified in Subsection (3)(e), of any possibility of obtaining an education waiver;

(n) course completion policy, as provided to students, describing the length of time allowed for completion and detailed requirements; and

(o)[~~(m)~~] any other information the division requires.

(3) Minimum standards.

(a) The course schedule may not provide or allow for more than eight credit hours per student per day.

(b) The attendance statement shall require that each student attend at least 90% of the scheduled class periods, excluding breaks.

(c) The disclaimer shall adhere to the following requirements:

(i) be typed in all capital letters at least 1/4 inch high; and

(ii) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for licensees at this school."

(d) The criminal history disclosure statement shall:

(i) be provided to each student prior to the school accepting payment; and

(ii) clearly inform the student that upon application with the division, the student will be required to:

(A) accurately disclose the student's criminal history according to the licensing questionnaire provided by the division;

(B) submit fingerprint cards to the division and consent to a criminal background check; and

(C) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(iii) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection 61-2f-204(1)(e) and Subsection R162-2f-201(1) in making a decision on the application; and

(iv) include a section for the student's attestation that the student has read and understood the disclosure.

(e) The education waiver disclosure shall adhere to the following requirements:

(i) disclose to students the requirements for obtaining an education waiver while they are still eligible for a full refund;

(ii) be typed in all capital letters at least 1/4 inch high;

(iii) inform the students that the division grants education waivers for qualified individuals; and

(iv) state the following language: "A student accepted or enrolled for education hours cannot later reduce those hours by applying for an education waiver. An education waiver must be obtained before a student enrolls and is accepted by a school for education hours."

[~~(e)~~](f) Within 15 days after the occurrence of any material change in the information outlined in this Subsection (2)(a), the school shall provide, to the division's education staff, written notice of the change.

(4)(a) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a school certification, an applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(c) To reinstate an expired school certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired school certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (4) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206b. Certification Prelicensing Course.

(1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) comprehensive course outline including:

(i) description of the course, including a statement of whether the course is designed for:

(A) sales agents; or

(B) brokers;

(ii) number of class periods spent on each subject area;

(iii) minimum of three to five learning objectives for every three hours of class time; and

(iv) reference to the course outline approved by the commission for each topic;

(b) number of quizzes and examinations;

(c) grading system, including methods of testing and standards of grading;

(d)(i) a copy of at least two final examinations to be used in the course;

(ii) the answer key(s) used to determine if a student has passed the exam; and

(iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and

(e) a list of the titles, authors and publishers of all required textbooks.

(2) To certify a prelicensing course for distance education, a person shall, no later than 60 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) all items listed in this Subsection (1);

(b) description of each method of course delivery;

(c) description of any media to be used;

(d) course access for the division using the same delivery methods and media that will be provided to the students;

(e) description of specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

(f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;

(g) description of how and when certified prelicensing instructors will be available to answer student questions;[~~and~~]

(h) attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims[-]; and

(i) a description of the complaint process to resolve student grievances.

(3) Minimum standards. A prelicensing course shall:

(a) address each topic required by the course outline as approved by the commission;

(b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)(d)(i) and these rules;

(c) limit the credit that students may earn to no more than eight credit hours per day;

(d) be taught in an appropriate classroom facility unless approved for distance education;

(e) allow a maximum of 10% of the required class time for testing, including:

(i) practice tests; and

(ii) a final examination;[~~and~~]

(f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline[-]; and

(g) reflect the current statutes and rules of the division.

(4) A prelicensing course certification expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

R162-2f-206c. Certification of Continuing Education Course.

(1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified prior to its being taught.

(b) A licensee who completes a course that is not required to be certified pursuant to this Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to this Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.

(2) To certify a continuing education course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) name and contact information of the course provider;

(b) name and contact information of the entity through which the course will be provided;

(c) description of the physical facility where the course will be taught;

(d) course title;

(e) number of credit hours;

(f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:

(i) knowledge;

(ii) professionalism; and

(iii) ability to protect and serve the public;

(g) course outline including a description of the subject matter covered in each 15-minute segment;

(h) a minimum of three learning objectives for every three hours of class time;

(i) name and certification number of each certified instructor who will teach the course;

(j) copies of all materials to be distributed to participants;

(k) signed statement in which the course provider and instructor(s):

(i) agree not to market personal sales products;

(ii) allow the division or its representative to audit the course on an unannounced basis; and

(iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:

(A) course name;

(B) course certificate number assigned by the division;

(C) date(s) the course was taught;

(D) number of credit hours; and

(E) names and license numbers of all students receiving continuing education credit;

(l) procedure for pre-registration;

(m) tuition or registration fee;

(n) cancellation and refund policy;

(o) procedure for taking and maintaining control of attendance during class time;

(p) sample of the completion certificate;

(q) nonrefundable fee for certification as required by the division; and

(r) any other information the division requires.

(3) To certify a continuing education course for distance education, a person shall:

(a) comply with this Subsection (2);

(b) submit to the division a complete description of all course delivery methods and all media to be used;

(c) provide course access for the division using the same delivery methods and media that will be provided to the students;

(d) describe specific frequent and periodic[~~and regularly scheduled~~] interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;

(e) describe how and when certified instructors will be available to answer student questions; and

(f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(4) Minimum standards.

(a) Except for distance education courses, all courses shall be taught in an appropriate classroom facility and not in a private residence.

(b) The minimum length of a course shall be one credit hour.

(c) Except for online courses, the procedure for taking attendance shall be more extensive than having the student sign a class roll.

(d) The completion certificate shall allow for entry of the following information:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(vii) number of credit hours awarded;

(viii) course certification number;

(ix) course certification expiration date;

(x) signature of the course sponsor; and

(xi) signature of the licensee.

(5) Certification procedures.

(a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.

(b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.

(c) Core topics include the following:

(i) state approved forms and contracts;

(ii) other industry used forms or contracts;

(iii) ethics;

(iv) agency;

(v) short sales or sales of bank-owned property;

(vi) environmental hazards;

(vii) property management;

(viii) prevention of real estate and mortgage fraud;

(ix) federal and state real estate laws;

(x) division administrative rules; and

(xi) broker trust accounts;

(d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:

(i) obtain authorization to use the form(s) or contract(s) taught in the course;

(ii) obtain permission for licensees to subsequently use the form(s) or contract(s) taught in the course; and

(iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.

(e) Elective topics include the following:

(i) real estate financing, including mortgages and other financing techniques;

(ii) real estate investments;

(iii) real estate market measures and evaluation;

(iv) real estate appraising;

(v) market analysis;

(vi) measurement of homes or buildings;

(vii) accounting and taxation as applied to real property;

(viii) estate building and portfolio management for clients;

(ix) settlement statements;

(x) real estate mathematics;

(xi) real estate law;

(xii) contract law;

(xiii) agency and subagency;

(xiv) real estate securities and syndications;

(xv) regulation and management of timeshares, condominiums, and cooperatives;

(xvi) resort and recreational properties;

(xvii) farm and ranch properties;

(xviii) real property exchanging;

(xix) legislative issues that influence real estate practice;

(xx) real estate license law;
(xxi) division administrative rules;
(xxii) land development;
(xxiii) land use;
(xxiv) planning and zoning;
(xxv) construction;
(xxvi) energy conservation in buildings;
(xxvii) water rights;
(xxviii) landlord/tenant relationships;
(xxix) property disclosure forms;
(xxx) Americans with Disabilities Act;
(xxxi) fair housing;
(xxxii) affirmative marketing;
(xxxiii) commercial real estate;
(xxxiv) tenancy in common;
(xxxv) professional development;
(xxxvi) business success;
(xxxvii) customer relation skills;
(xxxviii) sales promotion, including:
(A) salesmanship;
(B) negotiation;
(C) sales psychology;
(D) marketing techniques related to real estate knowledge;
(E) servicing clients; and
(F) communication skills;
(xxxix) personal and property protection for licensees and their clients;
(xl) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety;[~~and~~]
(xli) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education[-]; and
(xlii) technology courses that utilize the majority of the time instructing students how the technology:
(A) directly benefits the consumer; or
(B) enables the licensee to be more proficient in performing the licensee's agency responsibilities.
(f) Unacceptable topics include the following:
(i) offerings in mechanical office and business skills, including:
(A) typing;
(B) speed reading;
(C) memory improvement;
(D) language report writing;
(E) advertising; and
(F) technology courses with a principal focus on technology operation, software design, or software use;
(ii) physical well-being, including:
(A) personal motivation;
(B) stress management; and
(C) dress-for-success;
(iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:
(A) sales meetings;
(B) in-house staff meetings or training meetings; and
(C) member orientations for professional organizations;
(iv) courses in wealth creation or retirement planning for licensees; and
(v) courses that are specifically designed for exam preparation.
(g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.
(6)(a) A continuing education course certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
(b) To renew a continuing education course certification, an applicant shall:
(i) complete a renewal application as provided by the division; and
(ii) pay a nonrefundable renewal fee.
(c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:
(i) comply with all requirements for a timely renewal; and
(ii) pay a nonrefundable late fee.
(d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:
(i) comply with all requirements for a timely renewal; and
(ii) pay a non-refundable reinstatement fee.
(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
(f) If a deadline specified in this Subsection (6) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206d. Certification of Prelicensing Course Instructor.
(1) An instructor shall certify with the division prior to teaching a prelicensing course.
(2) To certify, an applicant shall provide, within the 30-day period prior to the date on which the applicant proposes to begin instruction:
(a) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);
(b) evidence of having graduated from high school or achieved an equivalent education;
(c) evidence that the applicant understands the real estate industry through:
(i) a minimum of five years of full-time experience as a real estate licensee;
(ii) post-graduate education related to the course subject; or
(iii) demonstrated expertise on the subject proposed to be taught;
(d) evidence of ability to teach through:
(i) a minimum of 12 months of full-time teaching experience;
(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or
(iii) attendance at a division instructor development workshop totaling at least two days in length;
(e) evidence of having passed an examination;

(i) designed to test the knowledge of the subject matter proposed to be taught;

(ii) with a score of 80% or more correct responses, and;

(iii) within the six-month period preceding the date of application;

(f) name and certification number of the certified prelicensing school for which the applicant will work;

(g) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(h) a signed statement agreeing not to market personal sales products;

(i) any other information the division requires;

(j) an application fee; and

(k) course-specific requirements as follows:

(i) sales agent prelicensing course: evidence of being a licensed sales agent or broker; and

(ii) broker prelicensing course: evidence of being a licensed associate broker, branch broker, or principal broker.

(3) An applicant may certify to teach a subcourse of the broker prelicensing course by meeting the following requirements:

(a) Brokerage Management. An applicant shall:

(i) hold a current real estate broker license;

(ii) possess at least two years practical experience as an active real estate principal broker; and

(iii)(A) have experience managing a real estate office; or

(B) hold a certified residential broker or equivalent professional designation in real estate brokerage management.

(b) Advanced Real Estate Law. An applicant shall:

(i) hold a current real estate broker license;

(ii) evidence current membership in the Utah State Bar; or

(iii)(A) have graduated from an American Bar Association accredited law school; and

(B) have at least two years real estate law experience.

(c) Advanced Appraisal. An applicant shall hold:

(i) a current real estate broker license, or

(ii) a current appraiser license or certification from the division.

(d) Advanced Finance. An applicant shall:

(i) evidence at least two years practical experience in real estate finance; and

(ii)(A) hold a current real estate broker license;

(B) evidence having been associated with a lending institution as a loan officer; or

(C) hold a degree in finance.

(e) Advanced Property Management. An applicant shall hold a current real estate license and:

(i) evidence at least two years full-time experience as a property manager; or

(ii) hold a certified property manager or equivalent professional designation.

(4) A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the division academic training or experience qualifying the faculty member to teach the course.

(5)(a) A prelicensing instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a prelicensing course instructor certification, an individual shall:

(i) submit all forms required by the division;

(ii) evidence having taught, within the two-year period prior to the date of application, [~~at least 20 hours of in-class instruction in~~]a certified real estate course;

(iii) evidence having attended, within the two-year period prior to the date of application, an instructor development workshop sponsored by the division; and

(iv) pay a nonrefundable renewal fee.

(c) To reinstate an expired prelicensing course instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired prelicensing course instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (5) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206e. Certification of Continuing Education Course Instructor.

(1) An instructor shall certify with the division before teaching a continuing education course.

(2) To certify, an applicant shall, within the 30-day period prior to the date on which the applicant proposes to begin instruction, provide the following:

(a) name and contact information of the applicant;

(b) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

(c) evidence of having graduated from high school or achieved an equivalent education;

(d) evidence that the applicant understands the subject matter to be taught through:

(i) a minimum of two years of full-time experience as a real estate licensee;

(ii) college-level education related to the course subject; or

(iii) demonstrated expertise on the subject proposed to be taught;

(e) evidence of ability to teach through:

(i) a minimum of 12 months of full-time teaching experience; or

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience;[~~ or~~

~~(iii) attendance at a division instructor development workshop totaling at least two days in length;~~]

(f) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(g) a signed statement agreeing not to market personal sales products;

(h) any other information the division requires; and

(i) a nonrefundable application fee.

(3)(a) A continuing education course instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a continuing education course instructor certification, a person shall:

(i) submit all forms required by the division;

(ii)(A) evidence having taught, within the previous renewal period, a minimum of 12 continuing education credit hours; or

(B) submit written explanation outlining:

(I) the reason for not having taught a minimum of 12 continuing education credit hours; and

(II) documentation to the division that the applicant maintains satisfactory expertise in the subject area proposed to be taught; and

(iii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (3) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-401d. School and Provider Conduct.

(1) Affirmative duties. A school's owner(s) and director(s) shall:

(a) within 15 days after the occurrence of any material change in the information provided to the division under Subsection R162-2f-206a(2)(a), give the division written notice of that change;

(b)(i) provide instructors of prelicensing courses with the state-approved course outline; and

(ii) ensure that any prelicensing course adheres to the topics mandated in the state-approved course outline;

(c) ensure that all instructors comply with Section R162-2f-401e.

(d) prior to accepting payment from a prospective student for a prelicensing education course:

(i) provide the criminal history disclosure statement described in Subsection R162-2f-206a(3)(d);[~~and~~]

(ii) obtain the student's signature on the criminal history disclosure; and

(iii) have the enrollee verify that an education waiver has not been obtained from the division;

(e)(i) retain signed criminal history disclosures for a minimum of three years from the date of course completion; and

(ii) make the signed criminal history disclosures available for inspection by the division upon request;

(f) maintain for a minimum of three years after enrollment:

(i) the registration record of each student;

(ii) the attendance record of each student; and

(iii) any other prescribed information regarding the offering, including exam results, if any;

(g) ensure that course topics are taught only by:

(i) certified instructors; or

(ii) guest lecturers;

(h)(i) limit the use of approved guest lecturers to a total of 20% of the instructional hours per approved course; and

(ii) prior to using a guest lecturer to teach a portion of a course, document for the division the professional qualifications of the guest lecturer;

(i) furnish to the division an updated roster of the school's approved instructors and guest lecturers each time there is a change;

[~~(j) at the conclusion of a course:~~

~~(i) provide to each student who completes the course a course evaluation in the form required by the division; and~~

~~(ii) submit the completed course evaluations to the division within ten business days;~~

] (j)[~~(k)~~] within ten days of teaching a course, upload course completion information for any student who:

(i) successfully completes the course; and

(ii) provides an accurate name or license number within seven business days of attending the course;

(k)[~~(l)~~] substantiate, upon request by the division, any claims made in advertising; and

(l)[~~(m)~~] include in all advertising materials the continuing education course certification number issued by the division.

(2) Prohibited conduct. A school may not:

(a) award continuing education credit for a course that has not been certified by the division prior to its being taught;

(b) award continuing education credit to any student who fails to:

(i) attend a minimum of 90% of the required class time; or

(ii) pass a prelicense course final examination;

(c) accept a student for a reduced number of hours without first having a written statement from the division defining the exact number of hours the student must complete;

(d) allow a student to challenge by examination any course or part of a course in lieu of attendance;

(e) allow a course approved for traditional education to be:

(i) taught in a private residence; or

(ii) completed through home study;

(f) make a misrepresentation in advertising about any course of instruction;

(g) disseminate advertisements or public notices that disparage the dignity and integrity of the real estate profession;

(h) make disparaging remarks about a competitor's services or methods of operation;

(i) attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank;

(j) give valuable consideration to a real estate brokerage or licensee for referring students to the school;

(k) accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage;

(l) allow real estate brokerages to solicit for agents at the school during class time, including the student break time;

(m) obligate or require students to attend any event in which a brokerage solicits for agents;

(n) award more than eight credit hours per day per student;

(o) award credit for an online course to a student who fails to complete the course within one year of the registration date;

(p) advertise or market a continuing education course that has not been:

(i) approved by the division; and

(ii) issued a current continuing education course certification number; or

(q) advertise, market, or promote a continuing education course with language indicating that division certification is pending or otherwise forthcoming.

KEY: real estate business, operational requirements, trust account records, notification requirements
Date of Enactment or Last Substantive Amendment: [~~August 21, 2012~~]2013
Authorizing, and Implemented or Interpreted Law: 61-2f-103(1); 61-2f-105; 61-2f-203(1)(e); 61-2f-206(3); 61-2f-307

Education, Administration
R277-531-3
Public Educator Evaluation Framework

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37537
FILED: 04/24/2013

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide minor wording changes to make the language consistent with the intent of the state law.

SUMMARY OF THE RULE OR CHANGE: In Subsection R277-531-3F(8), "process" is changed to "procedure" and "conclusions" is changed to "process".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection s53A-1-402(1)(a)(i)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. The wording changes make the language consistent with the intent of the state law.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. The wording changes make the language consistent with the intent of the state law.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule and the amendments apply to public education and do not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The wording changes make the language consistent with the intent of the state law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The wording changes make the language consistent with the intent of the state law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

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R277. Education, Administration.
R277-531. Public Educator Evaluation Requirements (PEER).
R277-531-3. Public Educator Evaluation Framework.

A. The Board shall provide a framework that includes five general evaluation system areas and additional discretionary components of an LEA's educator evaluation system.

B. Alignment with Board expectations and standards and required consistency of LEA policies with evaluation process:

(1) An LEA educator evaluation system shall be based on rigorous performance expectations aligned with R277-530.

(2) An LEA evaluation system shall establish and articulate performance expectations individually for all licensed LEA educators.

(3) An LEA evaluation system shall include valid and reliable measurement tools including, at a minimum:

(a) observations of instructional quality;

(b) evidence of student growth;

(c) parent and student input; and

(d) other indicators as determined by the LEA.

(4) An LEA evaluation system shall provide a summative yearly rating of educator performance using uniform statewide terminology and definitions. An LEA evaluation system shall include summative and formative components.

(5) An LEA evaluation system shall direct the revision or alignment of all related LEA policies, as necessary, to be consistent with the LEA Educator Evaluation System.

C. Valid and reliable tools:

(1) An LEA evaluation system shall use valid, reliable and research-based measurement tool(s) for all educator evaluations. Such measurements:

(a) employ a variety of measurement tools;

(b) adopt differentiated methodologies for measuring student growth for educators in subject areas for which standardized tests are available and in subject areas for which standardized tests are not available;

(c) provide evaluation for non-instructional licensed educators and administrators;

(2) shall provide for both formative and summative evaluation data;

(3) data gathered from tools may be considered by an LEA to inform decisions about employment and professional development.

D. Discussion, collaboration and protection of confidentiality with educators regarding evaluation process:

(1) An LEA evaluation system shall provide for clear and timely notice to educators of the components, timelines and consequences of the evaluation process.

(2) An LEA evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in R277-501 and evaluation conferences.

(3) An LEA evaluation system shall protect personal data gathered in the evaluation process.

E. Support for instructional improvement:

(1) An LEA evaluation system shall assess professional development needs of educators.

(2) An LEA evaluation system shall identify educators who do not meet expectations for instructional quality and provide support as appropriate at the LEA level which may include providing educators with mentors, coaches, specialists in effective instruction and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.

F. Records and documentation of required educator evaluation information:

(1) An LEA evaluation system shall include the evaluation of all licensed educators at least once a year.

(2) An LEA evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and definitions.

(3) An LEA evaluation system shall provide for the evaluation of all provisional educators, as defined by the LEA under Section 53A-8a-405, at least twice yearly.

(4) An LEA evaluation system shall include the following specific educator performance criteria:

(a) instructional quality measures to be determined by the LEA;

(b) student growth score to be completely phased in by July 1, 2015; and

(c) other measures as determined by the LEA including data gathered from student/parent input.

(5) the Board shall determine weightings for specific educator performance criteria to be used in the LEA's evaluation system.

(6) An LEA evaluation system shall include a plan for recognizing educators who demonstrate exemplary professional effectiveness, at least in part, by student achievement.

(7) An LEA evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

(8) An LEA evaluation system shall include a review or appeals [~~process~~]procedure for an educator to challenge the [~~conclusions~~]process of a summative evaluation that provides for adequate and timely due process for the educator consistent with Section 53A-8a-406(2).

G. An LEA may include additional components in an evaluation system.

H. A local board of education shall review and approve an LEA's proposed evaluation system in an open meeting prior to the local board's submission to the Board for review and approval.

KEY: educators, evaluations, requirements
Date of Enactment or Last Substantive Amendment: [~~November 8, 2012~~]2013
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a)(i); 53A-1-401(3)

Environmental Quality, Water Quality
R317-4
Onsite Wastewater Systems

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 37575
FILED: 05/01/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change replaces existing Rule R317-4, substituting old language and awkward organization with newer concepts and technologies in a more intuitive format.

SUMMARY OF THE RULE OR CHANGE: This is a complete re-write of the existing rule. Listed below are significant changes incorporated into the proposed (reenacted) rule: 1) local health departments (LHDs) are now granted authority to administer the alternative system program, although a LHD may request to "opt out"; 2) rules may now be waived for the repair of malfunctioning systems provided the repair is

equally protective of public health and the environment; 3) soil logs using USDA classification may now be used in place of percolation tests for some designs; 4) lots with excessively permeable soils (faster than 1 min/inch) may now be approvable using packed bed media treatment with disinfection; 5) drain fields may now be installed on slopes over 25% (and up to 35%) based on a site-specific analysis by a geotechnical engineer; 6) pressure distribution may now be used in lieu of gravity dispersal without the need for pretreatment; 7) maximum soil cover over tanks is now restricted to 4 feet except for "unusual conditions"; 8) distribution boxes and drop boxes are now required to install a riser to the surface; 9) the maximum length of absorption trenches is increased from 100 feet to 150 feet; 10) bundled synthetic aggregate may now be used in place of gravel drain media; 11) vertical separation to groundwater is increased from 2 feet to 4 feet for deep wall trenches and seepage pits; 12) earth fill systems are no longer permitted; 13) sand lined trench systems are now included as an alternative system, and may be used in type 1-4 soils or saprolite; 14) operation and maintenance is now encouraged for conventional systems and continues to be required for alternative systems; and 15) variance approval is now delegated to the LHD having jurisdiction, and variances are now allowed for the entire rule, except for separation distance to a public water source. Any request for a variance must be supported by a site-specific analysis demonstrating equal or greater protection of public health and the environment, prepared by licensed engineer or geotechnical engineer.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No impact to state budget is anticipated. The rule applies to wastewater systems under the jurisdiction of local health departments.
♦ LOCAL GOVERNMENTS: This rule generally gives LHDs more flexibility and may result in additional lots having the capability of development. LHDs may incur additional costs of review and inspection of the new systems and for variance requests. Actual costs cannot be determined because the number of potential alternative systems or variance requests which may be proposed are unknown. Unit costs are difficult to estimate because of the wide range of approaches and personnel used by the LHD. LHD are aware of potential increased costs. Any increased costs will likely be recouped through fees.
♦ SMALL BUSINESSES: As additional lots are developed, businesses influenced by small wastewater disposal systems, i.e., pumpers, designers, installers, suppliers, may show an increased demand for their services and products.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule generally gives individuals more flexibility to develop properties that were previously "unbuildable" due to site constraints for wastewater disposal. For those individuals who choose to install an alternative system for those lots that are required to have this level of treatment may incur additional costs of $8,000 to $10,000 per system over the costs of a conventional system. Application for a variance under the proposed rule is voluntary. An applicant seeking a variance will require the expertise of a professional engineer or geologist to prepare an application package that contains all of the required information. These professional services may cost $2,000 or more depending on the complexities of the site, hydrology and hydrology, and the variance request itself. The proposed rules provide a list of standards that must be met, including that the proposed system will result in equal or greater protection of public health and the environment by meeting the minimum standards and intent of the rule. The ability to install an onsite wastewater system under a variance in an area where such a system was previously "unbuildable" may significantly increase the value of such a property. Aggregate impacts are difficult to estimate as it is unknown how many individuals will seek a variance under this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals who choose to install alternative systems allowed under the proposed rule and installing alternative technology to satisfy the variance standards, could incur an additional costs of $8,000 to $10,000 per system over the costs of a conventional system. The LHD may incur additional costs of review and inspections for the new systems and variance requests. Any increased costs to the LHD will likely be recouped through fees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule has been reviewed, edited and supported by a work group representing local health departments. Further review has been made by a formal stake holders group, with additional editing and endorsement. Granting the local health department greater flexibility to administer the alternative systems program, and delegating authority to review and approve variances, may incur increased costs. These costs will be offset by owners or developers now being able to utilize previously "unbuildable" lots.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/2013

AUTHORIZED BY: Walter Baker, Director

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

(**DAR NOTE:** The repealed text of this filing is not included in this Bulletin because the Director of the Division of Administrative Rules has determined it is too long to print. The text is published by reference to the text on file and maintained by the Division of Administrative Rules. (Subsection 63G-3-402(1)(d)))

R317-4-1. Authority, Purpose, Scope, and Administrative Requirements.

1.1 Authorization.

These rules are administered by the division authorized by Title 19 Chapter 5.

1.2. Purpose.

The purpose of this rule is to protect the public health and environment from potential adverse effects from onsite wastewater disposal within the boundaries of Utah.

1.3. Scope.

This rule shall apply to onsite wastewater systems.

1.4. Jurisdiction.

Local health departments have jurisdiction to administer this rule. Nothing contained in this rule shall be construed to prevent local health departments from:

A. adopting stricter requirements than those contained herein;

B. issuing an operating permit at a frequency not exceeding once every five years with an inspection showing a satisfactory performance of the permitted system by the department's staff before renewal;

C. taking necessary steps for ground water quality protection:

1. through adoption of a ground water quality protection management policy based on a ground water management study; or

2. by an onsite wastewater systems management planning policy and land use planning through the county's agency;

D. prohibiting any alternative system within its jurisdiction;

E. assessing fees for administration of this rule;

F. requiring the onsite systems within its jurisdiction be placed under an umbrella of a:

1. responsible management entity overseen by the local health department;

2. contract service provider overseen by the local health department; or

3. management district body politic created by the county for the purpose of operation, maintenance, repairs and monitoring of alternative or all onsite wastewater systems;

G. requiring conventional and alternative systems to be serviced; and

H. receiving a request for a variance, conducting a review, and granting either an approval or denial.

1.5. Alternative System Administration.

Local health departments shall administer an alternative systems program.

A. The local board of health may restrict its administration of these systems by notifying the division that it is exempt from this requirement by:

1. adopting a resolution or regulation; or

2. presenting an ordinance.

B. An alternative systems program shall:

1. advise the owner of the:

a. type of alternative system;

b. information concerning risk of failure;

c. level of maintenance required;

d. financial liability for repair, modification or replacement of a failed system; and

e. periodic monitoring requirements;

2. ensure that a Notice of the existence of the alternative system is recorded in the chain of title for that property;

3. provide oversight of installed alternative systems;

4. inspect all installed alternative systems at frequency specified in this rule, through:

a. the department's staff;

b. contracted service providers;

c. responsible management entities;

d. a management district body politic created by the county for the purpose of managing onsite wastewater systems; or

e. any combination of the above options;

5. maintain records of all installed alternative systems, failures, modifications, repairs and all inspections, recording the condition of the system at the time of inspection, such as overflow, surfacing, ponding, and nuisance;

6. submit an annual report to the division on or before September 1 for the previous state of Utah fiscal year's activities showing:

a. the type and number of alternative systems approved, installed, modified, repaired, failed, and inspected;

b. a summary of enforcement actions taken, pending and resolved; and

c. a summary of performance of water quality data collected;

7. require all alternative systems to be inspected and serviced as detailed in Section R317-4-13 Table 7 and Section R317-4-11.

1.6. Variance Administration Authority.

The Water Quality Board delegates the authority to grant or deny variances to the design requirements provided for in this rule to the local health departments. The board may amend, suspend, or rescind this delegation of authority to a local health department if it is determined that the local health department is not accepting or conducting reviews as described in Section R317-4-12.

A. The local health department having jurisdiction shall accept applications for variance requests on lots that are deemed not feasible for permitting an onsite wastewater system. Upon completion of a review, the local health department will grant or deny a variance to this rule as outlined in Section R317-4-12. The local health department also will submit an annual report of completed variance determinations to the division.

B. If a local health department fails to evaluate variance requests according to Section R317-4-12, the director shall notify the local health department. The director on behalf of the board may thereafter amend, suspend, or rescind the delegation of

variance authority to the local health department. The variance authority would then revert to the division, and requests will be reviewed as follows.

1. The director may appoint a variance advisory committee to consider variance requests and make recommendations to the director. Any such advisory committee shall include at least one representative from a local health department. The director may refer any variance request to the variance advisory committee.

2. Upon review of the recommendation submitted by the variance advisory committee, the director shall render a written determination of the requested variance. If no committee was appointed by the director, the director shall render a written determination. Written determinations must be given within 180 days of the receipt of a complete and technically adequate variance request.

3. The director's final written determination will be forwarded to the local health department that has jurisdiction. The local health department is not required to approve or deny an operating or construction permit based on the director's determination of a variance request.

R317-4-2. Definitions.

"Absorption area" means the entire area used for the subsurface treatment and dispersion of effluent by an absorption system.

"Absorption bed" means an absorption system consisting of large excavated areas utilizing drain media or chambers.

"Absorption system" means a covered system constructed to receive and to disperse effluent, from gravity or a pump, in such a manner that the effluent is effectively filtered and retained below the ground surface.

"Absorption trench" means an absorption system consisting of a series of narrow excavated trenches utilizing drain media, chambers, or bundled synthetic aggregate units.

"Alternative onsite wastewater system" means an onsite wastewater system that is not a conventional onsite wastewater system.

"At-grade system" means an alternative onsite wastewater system where the bottom of the absorption system is placed at or below the elevation of the existing site grade, and the top of the distribution pipe is above the elevation of existing site grade, and the absorption system is contained within fill that extends above that grade.

"Barrier material" means an effective, pervious material such as an acceptable synthetic filter fabric, or a two-inch layer of compacted straw.

"Bedrock" means the rock, usually solid, that underlies soil or other unconsolidated, superficial material.

"Bedroom" means any portion of a dwelling that is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include a den, study, sewing room, or sleeping loft. Unfinished basements shall be counted as a minimum of one additional bedroom.

"Board" means the Utah Water Quality Board.

"Body politic" means the state or its agencies or any political subdivision of the state to include a county, city, town, improvement district, taxing district or other governmental subdivision or public corporation of the state.

"Building sewer" means the pipe that carries wastewater from the building to a public sewer, an onsite wastewater system or other point of dispersal. It is synonymous with "house sewer".

"Bundled synthetic aggregate trench" means an absorption trench utilizing bundled synthetic aggregate units.

"Bundled synthetic aggregate unit" means a cylindrically shaped manufactured unit of synthetic aggregate enclosed in polyolefin netting, which may contain a perforated pipe.

"Chamber" means an open bottom, chambered structure of an approved material and design.

"Chambered trench" means an absorption trench utilizing chambers.

"Cleanout" means a device designed to provide access for removal of deposited or accumulated materials, generally from a pipe.

"Closed loop distribution" means a distribution method where the absorption system layout has the inlet and outlet ends of each lateral connected creating a complete and continuous pathway for effluent flow.

"Coarse drain media" means drain media ranging from 3/4 to 12 inches in diameter.

"Condominium" means the ownership of a single unit in a multi-unit project together with an undivided interest in common, in the common areas and facilities of the property.

"Connecting trench" means an absorption trench that is used to connect other absorption trenches, is less than 20 feet in length, and may be used to calculate total required absorption area.

"Construction permit" means the permit that authorizes an onsite wastewater system to be installed according to an approved design. An additional construction permit may also authorize activities associated with the repair or alteration of a malfunctioning or failing system.

"Conventional onsite wastewater system" means an onsite wastewater system typically consisting of a building sewer, a septic tank, and an absorption system utilizing absorption trenches, absorption beds, deep wall trenches, or seepage pits.

"Cover" means soils used to overlay the absorption area that is free of large stones 10 inches diameter or larger, frozen clumps of earth, masonry, stumps, or waste construction material, or other materials that could damage the system.

"Curtain drain" means any ground water interceptor or drainage system that is backfilled with gravel or other suitable material and is intended to interrupt or divert the course of shallow ground water or surface water away from the onsite wastewater system.

"Designer" means a person who fulfills the requirements of Rule R317-11.

"Deep wall trench" means an absorption system consisting of deep excavated trenches utilizing coarse drain media, with a minimum sidewall absorption depth of 24 inches of suitable soil formation below the distribution pipe.

"Director" means the director of the Division of Water Quality or, for purposes of groundwater quality at a facility licensed by and under the Division of Radiation Control, the director of the Division of Radiation Control.

"Distribution box" means a watertight structure that receives effluent and distributes it concurrently, in essentially equal portions, into two or more pipes leading to an absorption system.

"Distribution pipe" means an approved pipe, solid or perforated, used in the dispersion of effluent in an absorption system.

"Diversion valve" means a watertight structure that receives effluent through one inlet and distributes it to two or more outlets, only one of which is used at a time.

"Division" means the Utah Division of Water Quality.

"Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, excluding non-domestic wastewater. It is synonymous with the term "sewage".

"Drain media" means media used in an absorption system. It shall consist of stone, crushed stone, or gravel, ranging from 3/4 to 2-1/2 inches in diameter. It shall be free from fines, dust, sand or organic material and shall be durable and inert so that it will maintain its integrity, will not collapse or disintegrate with time. The maximum fines in the media shall be 2% by weight passing through a US Standard #10 mesh or 2 millimeter sieve. It shall be protected by a barrier material.

"Drainage system" means all the piping within public or private premises that conveys sewage or other liquid wastes to a legal point of treatment and dispersal, but does not include the mains of a public sewer system or a public sewage treatment or disposal plant.

"Drop box" means a watertight structure that receives septic tank effluent and distributes it into one or more distribution pipes, and into an overflow leading to another drop box and absorption system located at a lower elevation.

"Dry wash" means the dry bed of an ephemeral stream that flows only after heavy rains and is often found at the bottom of a canyon.

"Dwelling" means any structure, building, or any portion thereof that is used, intended, or designed to be occupied for human living purposes including houses, mobile homes, hotels, motels, and apartments.

"Effluent" means the liquid discharge from any treatment unit including a septic tank.

"Effluent pump" means a pump used to lift effluent.

"Effluent sewer" means solid pipe that carries effluent to the absorption system.

"Ejector pump" means a device to elevate or pump sewage to a septic tank, public sewer, or other means of disposal.

"Ephemeral stream" means a stream that flows for a small period of time, a week or less, after a precipitation event.

"Excessively permeable soil" means soils having an excessively high permeability, such as cobbles or gravels with little fines and large voids, and having a percolation rate faster than 1 minute per inch.

"Experimental onsite wastewater system" means an onsite wastewater treatment and absorption system that is still in experimental use and requires further testing in order to provide sufficient information to determine its acceptance.

"Filter fabric" means a synthetic, non-degradable woven or spun-bonded sheet material that has adequate tensile strength to prevent ripping during installation and backfilling, adequate permeability to allow free passage of water and gases; and adequate particle retention to prevent downward migration of soil particles into the absorption system. The minimum physical properties for the fabric shall be 4.0 ounces per square yard or equivalent.

"Ground water" means that portion of subsurface water that is in the zone of soil saturation.

"Ground water table" means the surface of a body of unconfined ground water in which the pressure is equal to that of the atmosphere.

"Ground water table, perched" means unconfined ground water separated from an underlying body of ground water by an unsaturated zone. Its water table is a perched water table. It is underlain by a restrictive strata or impervious layer. Perched ground water may be either permanent, where recharge is frequent enough to maintain a saturated zone above the perching bed, or temporary, where intermittent recharge is not great or frequent enough to prevent the perched water from disappearing from time to time as a result of drainage over the edge of or through the perching bed.

"Gulch" means a small rocky ravine or a narrow gorge, especially one with an ephemeral stream running through it.

"Gully" means a channel or small valley, especially one carved out by persistent heavy rainfall or an ephemeral stream.

"Impervious strata" means a layer that prevents water or root penetration. In addition, it shall be defined as unsuitable soils or soils having a percolation rate slower than 60 minutes per inch for conventional systems.

"Installer" means a qualified person with an appropriate contractor's license and knowledgeable in the installation or repair of an onsite wastewater system or its components.

"Intermittent stream" means a stream that flows for a period longer than an ephemeral stream on a seasonal basis or after a precipitation event.

"Invert" means the lowest portion of the internal cross section of a pipe or fitting.

"Lateral" means a length of distribution pipe or chambered trenches in the absorption system.

"Local health department" means a county or multi-county local health department established under Title 26A.

"Lot" means a portion of a subdivision, or any other parcel of land intended as a unit for transfer of ownership or for development or both and may not include any part of the right-of-way of a street or road.

"Malfunctioning or failing system" means an onsite wastewater system that is not functioning in compliance with the requirements of this regulation and may include:

A. absorption systems that seep or flow to the surface of the ground or into waters of the state;

B. systems that overflow from any of their components;

C. systems that, due to failure to operate in accordance with their designed operation, cause backflow into any portion of a building drainage system;

D. systems discharging effluent that does not comply with applicable effluent discharge standards;

E. leaking septic tanks; or

F. noncompliance with standards stipulated on or by the construction permit, operating permit, or both.

"Maximum ground water table" means the highest elevation that the top of the "ground water table" or "ground water table, perched" is expected to reach for any reason over the full operating life of the onsite wastewater system at that site.

"May" means discretionary, permissive, or allowed.

"Mound system" means an alternative onsite wastewater system where the bottom of the absorption system is placed above the elevation of the original site, and the absorption system is contained in a mounded fill body above that grade.

"Non-closed loop distribution" means a distribution method where the absorption system layout has lateral ends that are not connected.

"Non-domestic effluent" means the liquid discharge from any treatment unit including a septic tank that has a BOD5 equal or greater than 250 mg/L; or TSS equal to or greater than 145 mg/L; or fats, oils, and grease equal to or greater than 25 mg/L.

"Non-domestic wastewater" means process wastewater originating from the manufacture of specific products. Such wastewater is usually more concentrated, more variable in content and rate, and requires more extensive or different treatment than domestic wastewater.

"Non-public water source" means a culinary water source that is not defined as a public water source.

"Non-residential" means a building that produces domestic wastewater, and is not a single family dwelling.

"Onsite wastewater system" means an underground wastewater dispersal system that is designed for a capacity of 5,000 gallons per day or less, and is not designed to serve multiple dwelling units that are owned by separate owners except condominiums. It usually consists of a building sewer, a septic tank and an absorption system.

"Operating permit" means the permit that authorizes the operation and maintenance of an onsite wastewater system or wastewater holding tank. It may have a fee component that requires periodic renewal.

"Packed bed media system" means an alternative onsite wastewater system that uses natural or synthetic media to treat wastewater. Biological treatment is facilitated via microbial growth on the surface of the media. The system may include a pump tank, a recirculation tank, or both.

"Percolation rate" means the time expressed in minutes per inch required for water to seep into saturated soil at a constant rate during a percolation test.

"Percolation test" means the method used to measure the permeability of the soil by measuring the percolation rate as described in these rules. This is sometimes referred to as a "perc test".

"Permeability" means the rate at which a soil transmits water when saturated.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state as defined in Section 19-1-103.

"Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for public health and safety as defined in Section 19-5-102.

"Pressure distribution" means a method designed to uniformly distribute effluent under pressure within an absorption system.

"Public health hazard" means, for the purpose of this rule, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to water or sewage that are likely to cause human illness, disorders or disability. These may include pathogenic viruses and bacteria, parasites, toxic chemicals and radioactive isotopes. A malfunctioning onsite wastewater system constitutes a public health hazard.

"Public water source" means a culinary water source, either publicly or privately owned, providing water for human consumption and other domestic uses, as defined in Title R309.

"Pump tank" means a watertight receptacle equipped with a pump and placed after a septic tank or other treatment component.

"Pump vault" means a device installed in a septic or pump tank that houses a pump and screens effluent with 1/8 inch openings or smaller before it enters the pump.

"Recirculation tank" means the tank that receives, stores, and recycles partially treated effluent and recycles that effluent back through the treatment process or to the absorption area.

"Regulatory authority" means either the Utah Division of Water Quality or the local health department having jurisdiction.

"Replacement area" means sufficient land with suitable soil, excluding streets, roads, easements and permanent structures that complies with the setback requirements of these rules, and is intended for the 100% replacement of absorption systems.

"Rotary tilling" means a tillage operation. Working land by plowing and harrowing in order to make land ready for cultivation, or employing power driven rotary motion of the tillage tool to loosen, shatter and mix soil.

"Sand lined trench system" means an alternative onsite wastewater system consisting of a series of narrow excavated trenches utilizing sand media and pressure distribution.

"Sand media" means sand fill meeting the ASTM C33/C33M - 11A Standard Specification for Concrete Aggregates.

"Saprolite" means weathered material underlying the soil that grades from soft thoroughly decomposed rock to rock that has been weathered sufficiently so that it can be broken in the hands, cut with a knife or easily dug with a backhoe and is devoid of expansive clay. It has rock structure instead of soil structure and does not include hard bedrock or hard fractured bedrock.

"Scarification" means loosening and breaking up of soil compaction in a manner that prevents smearing and maintains soil structure.

"Scum" means a mass of sewage solids, which is buoyed up by entrained gas, grease, or other substances, floating on the surface of wastes in a septic tank.

"Seepage pit" means an absorption system consisting of one or more deep excavated pits, either hollow-lined or filled, utilizing coarse drain media, with a minimum sidewall absorption depth of 48 inches of suitable soil formation below the distribution pipe.

"Septage" means the semi-liquid material that is pumped out of a septic or pump tank, generally consisting of the sludge, liquid, and scum layer.

"Septic tank" means a watertight receptacle that receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an absorption system.

"Sequential distribution" means a distribution method in which effluent does not pass through an absorption area before it enters the succeeding areas through a distribution box or relief line allowing for portions of the absorption area to be isolated.

"Serial distribution" means a distribution method in which effluent passes through an absorption area before entering the succeeding areas through a distribution box or relief line creating a single uninterrupted flow path.

"Shall" means a mandatory requirement.

"Should" means recommended or preferred and is intended to mean a desirable standard.

"Single-family dwelling" means a building designed to be used as a home by the owner or lessee of such building.

"Sludge" means the accumulation of solids that have settled in a septic tank or a wastewater holding tank.

"Slope" means the ratio of the rise divided by the run between two points, typically described as a percentage (rise divided by run multiplied by 100).

"Soil exploration pit" means an open pit dug to permit examination of the soil to evaluate its suitability for absorption systems. This is also referred to as a "test pit".

"Soil log" means a detailed description of soil characteristics and properties.

"Soil structure" means the way in which the individual particles, sand, silt, and clay, are arranged into larger distinct aggregates called peds. The main types of soil structure are granular, platy, blocky, prismatic, and columnar. Soil may not have a visible structure because it is either single grain or massive.

"Soil texture" means the percent of sand, silt, and clay in a soil mixture. Field methods for judging the texture of a soil are found in Section R317-4-14 Appendix C.

"Standard trench" means an absorption trench utilizing drain media into which effluent is discharged through specially designed distribution pipes.

"Suitable soil" means undisturbed soil that through textural and structural analysis or percolation rate meets the requirements for placement of an absorption system.

"Test pit" see "soil exploration pit".

"Unapproved system" means any onsite wastewater system that is deemed by the regulatory authority to be any:

A. installation without the required regulatory oversight, permits, or inspections;

B. repairs to an existing system without the required regulatory oversight, permits, or inspections; or

C. alteration to an existing system without the required regulatory oversight, permits, or inspections.

"USDA system of classification" means the system of classifying soil texture used by the United States Department of Agriculture.

"Waste" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water as defined in Section 19-5-102.

"Wastewater" means sewage, industrial waste or other liquid substances that might cause pollution of waters of the state. Intercepted ground water that is uncontaminated by wastes is not included.

"Wastewater holding tank" means a watertight receptacle designed to receive and store wastewater to facilitate treatment at another location.

"Waters of the state":

A. means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this state or any portion of the state; and

B. does not include bodies of water confined to and retained within the limits of private property, and that do not develop into or constitute a nuisance, or public health hazard, or a menace to fish or wildlife.

"Wind-blown sand" means sand that is formed by the weathering and erosion of sandstone typically found in sand-dune or sand-sheet deposits and is capable of producing sand and dust storms when disturbed.

R317-4-3. General Standards, Prohibitions, Requirements, and Enforcement.

3.1. Failure to Comply With Rules.

Any person failing to comply with this rule shall be subject to enforcement action as specified in Sections 19-5-115 and 26A-1-123.

3.2. Feasibility.

Onsite wastewater systems are not feasible in some areas and situations. If property characteristics indicate conditions that may fail in any way to meet the requirements specified herein, the use of onsite wastewater systems shall be prohibited.

3.3. Onsite Wastewater System Required.

The drainage system of each dwelling, building or premises covered herein shall receive all wastewater, including bathroom, kitchen, and laundry wastes, and shall have a connection to a public sewer except when such sewer is not available or practicable for use, in which case connection shall be made:

A. to an onsite wastewater system found to be adequate and constructed in accordance with this rule; or

B. to any other type of wastewater system acceptable under Rules R317-1, R317-3, R317-5, R317-401, or R317-560.

3.4. Flows Prohibited From Entering Onsite Wastewater Systems.

No ground water drainage, drainage from roofs, roads, yards, or other similar sources shall discharge into any portion of an onsite wastewater system, but shall be disposed of so they will in no way affect the system. Non-domestic wastes such as chemicals, paints, or other substances that are detrimental to the proper functioning of an onsite wastewater system may not be disposed of in such systems.

3.5. Increased Flows Prohibited.

A person may not connect or expand the use of a single-family dwelling or nonresidential facility connected to an existing onsite wastewater system if the projected wastewater flows would be greater than the original design flow. When the design flow is exceeded, expansion may occur if the onsite wastewater system is modified, permitted, and approved by the regulatory authority for the increased flow.

3.6. Material Standards.

All materials used in onsite wastewater systems shall comply with the standards in this rule.

3.7. Property Lines Crossed.

Systems, including replacement areas, shall be located on the same lot as the building served unless, when approved by the

regulatory authority, a perpetual utility easement and right-of-way is established on an adjacent or nearby lot for the construction, operation, and continued maintenance, repair, alteration, inspection, relocation, and replacement of an onsite wastewater system, including all rights to ingress and egress necessary or convenient for the full or complete use, occupation, and enjoyment of the granted easement. The easement shall be large enough to accommodate the proposed onsite wastewater system and replacement area. The easement shall meet the setbacks specified in Section R317-4-13 Table 2.

3.8. Initial Absorption Area and Replacement Area.

A. All properties that utilize onsite wastewater systems shall be required to have a replacement area.

B. The absorption area, including installed system and replacement area, may not be subject to activity that is likely to adversely affect the soil or the functioning of the system. This may include vehicular traffic, covering the area with asphalt, concrete, or structures, filling, cutting or other soil modifications.

3.9. Operation and Maintenance.

Owners of onsite wastewater systems shall operate, maintain, and service their systems according to the standards of this rule.

3.10. No Discharge to Surface Waters or Ground Surface.

Effluent from any onsite wastewater system may not be discharged to surface waters or upon the surface of the ground. Wastewater may not be discharged into any abandoned or unused well, or into any crevice, sinkhole, or similar opening, either natural or artificial.

3.11. Repair of a Malfunctioning or Unapproved System.

Upon determination by the regulatory authority that a malfunctioning or unapproved onsite wastewater system creates or contributes to any dangerous or unsanitary condition that may involve a public health hazard, or noncompliance with this rule, the regulatory authority shall order the owner to take the necessary action to cause the condition to be corrected, eliminated or otherwise come into compliance.

A. For malfunctioning systems, the local health department shall require and order:

1. all necessary steps, such as maintenance, servicing, repairs, and replacement of system components to correct the malfunctioning system, to meet all rule requirements to the extent possible and may not create any new risk to the environment or public health;

2. effluent quality testing as required by Subsection R317-4-11.4;

3. evaluation of the system design including non-approved changes to the system, the wastewater flow, and biological and chemical loading to the system;

4. additional tests or samples to troubleshoot the system malfunction.

B. The regulatory authority may require fees for additional inspections, reviews, and testing.

3.12. Procedure for Wastewater System Abandonment.

A. When a dwelling served by an onsite wastewater system is connected to a public sewer, the septic tank shall be abandoned and shall be disconnected from and bypassed with the building sewer unless otherwise approved by the regulatory authority.

B. Whenever the use of an onsite wastewater system has been abandoned or discontinued, the owner of the real property on which such wastewater system is located shall render it safe by having the septic tank, any other tanks, hollow seepage pit, or cesspool wastes pumped out or otherwise disposed of in an approved manner. Within 30 days the tanks shall be:

1. crushed in place and the void filled;

2. completely filled with earth, sand, or gravel; or

3. removed.

C. The regulatory authority may require oversight, permit, or inspection of the abandonment process.

3.13. Septage Management.

A person shall only dispose of septage, or sewage contaminated materials in a location or manner in accordance with the regulations of the division and the local health department having jurisdiction.

3.14. Multiple Dwelling Units.

Multiple dwelling units under individual ownership, except condominiums, may not be served by a single onsite wastewater system except where that system is under the sponsorship of a body politic. Plans and specifications for such systems shall be submitted to and approved by the division. Issuance of a construction permit by the board shall constitute approval of plans and authorization for construction. Before the permit is issued, the division shall review plans with the local health department having jurisdiction over the proposed onsite wastewater system.

R317-4-4. Feasibility Determination.

4.1. General Criteria for Determining Onsite Wastewater System Feasibility.

The regulatory authority shall determine the feasibility of using an onsite wastewater system. The regulatory authority will review required information for any existing or proposed lot to determine onsite wastewater system feasibility. The required information shall be prepared at the owner's expense by, or under the supervision of, a qualified person approved by the regulatory authority.

A. General Information.

The required information shall include:

1. the county recorder's plat and parcel ID and situs address if available;

2. name and address of the property owner and person requesting feasibility; and

3. the location, type, and depth of all existing and proposed non-public water supply sources within 200 feet of the proposed onsite wastewater systems, and of all existing or proposed public water supply sources within 1,500 feet of the proposed onsite wastewater systems.

a. If the lot is located in aquifer recharge areas or areas of other particular geologic concern, the regulatory authority may require such additional information relative to ground water movement, or possible subsurface wastewater flow.

b. If the proposed onsite wastewater system is located within any drinking water source protection zone two, this zone shall be shown.

4. The location and distance to nearest sewer, owner of sewer, whether property is located within service boundary, and size of sewer.

5. Statement of proposed use if other than a single-family dwelling.

B. Soil and Site Evaluation.

1. Soil Exploration Pit and Percolation Test.

a. A minimum of one soil exploration pit shall be excavated to allow the evaluation of the soil. The soil exploration pit shall be constructed and soil log recorded as detailed in Section R317-4-14 Appendix C.

b. The regulatory authority shall have the option of requiring a percolation test in addition to the soil exploration pit.

c. The regulatory authority:

i. shall require additional soil exploration pits, percolation tests, or both where flows are greater than 1,000 gallons per day; and

ii. may require additional pits, tests, or both where:

(1) soil structure varies;

(2) limiting geologic conditions are encountered; or

(3) the regulatory authority deems it necessary.

d. The percolation test shall be conducted as detailed in Section R317-4-14 Appendix D.

e. Soil exploration pits and percolation tests shall be conducted as closely as possible to the proposed absorption system site. The regulatory authority shall have the option of inspecting the open soil exploration pits and monitoring the percolation test procedure. All soil logs and percolation test results shall be submitted to the regulatory authority.

f. When there is a substantial discrepancy between the percolation rate and the soil classification, it shall be resolved through additional soil exploration pits, percolation tests, or both.

g. Absorption system feasibility shall be based on Section R317-4-13 Table 5 or 6.

2. Wind-Blown Sand.

The extremely fine grained wind-blown sand found in some parts of Utah shall be deemed not feasible for absorption systems. This does not apply to lots that have received final local health department approval prior to the effective date of this rule.

a. Percolation test results in wind-blown sand will generally be rapid, but experience has shown that this soil has a tendency to become sealed with minute organic particles within a short period of time. For lots that have received final local health department approval prior to the effective date of this rule, systems may be constructed in such material provided it is found to be within the required range of percolation rates specified in these rules, and provided further that the required area shall be calculated on the assumption of minimum acceptable percolation rate of 60 minutes per inch for standard trenches, deep wall trenches, and seepage pits, and 40 minutes per inch for absorption beds.

3. Suitable Soil Depth.

For conventional systems, effective suitable soil depth shall extend at least 48 inches or more below the bottom of the dispersal system to bedrock formations, impervious strata, or excessively permeable soil. Some alternative onsite wastewater systems may have other requirements.

4. Ground Water Requirements.

The elevation of the anticipated maximum ground water table shall meet the separation requirements of the anticipated absorption systems. Local health departments and other local government entities may impose stricter separation requirements between absorption systems and the maximum ground water table when deemed necessary. Building lots recorded or having received final local health department approval prior to May 21, 1984 shall be subject to the ground water table separation requirements of the then Part IV of the Code of Waste Disposal Regulations dated June 21, 1967, that states "high ground water elevation shall be at least 1 foot below the bottom of absorption systems and at least 4 feet below finished grade". Notwithstanding this grandfather provision for recorded or other approved lots, the depth to ground water requirements are applicable if compelling or countervailing public health interests would necessitate application of the more stringent requirements of this regulation.

a. Maximum Ground Water.

Maximum ground water table shall be determined where the anticipated maximum ground water table, including irrigation induced water table, might be expected to rise closer than 48 inches to the elevation of the bottom of the onsite wastewater system. Maximum ground water table shall be determined where alternative onsite wastewater systems may be considered based on groundwater elevations. The maximum ground water table shall be determined by the following.

i. Regular monitoring of the ground water table, or ground water table, perched, in an observation well for a period of one year, or for the period of the maximum groundwater table.

(1) Previous ground water records and climatological or other information may be consulted for each site proposed for an onsite wastewater system and may be used to adjust the observed maximum ground water table elevation.

ii. Direct visual observation of the maximum ground water table in a soil exploration pit for:

(1) evidence of crystals of salt left by the maximum ground water table; or

(2) chemically reduced iron in the soil, reflected by redoxmorphoric features, i.e. a mottled coloring.

(3) Previous ground water records and climatological or other information may be consulted for each site proposed for an onsite wastewater system and may be used to adjust the observed maximum ground water table elevation in determining the anticipated maximum ground water table elevation.

iii. In cases where the anticipated maximum ground water table is expected to rise to closer than 34 inches from the original ground surface and an alternative or experimental onsite wastewater system would be considered, previous ground water records and climatological or other information shall be used to adjust the observed maximum ground water table in determining the anticipated maximum ground water table.

b. Curtain Drains.

A curtain drain or other effective ground water interceptor may be allowed as an attempt to lower the groundwater table to meet the requirements of this rule. The regulatory authority shall require that the effectiveness of such devices in lowering the ground water table be demonstrated during the season of maximum ground water table.

4. Ground Slope.

Absorption systems may not be placed on slopes where the addition of fluids is judged to create an unstable slope.

a. Absorption systems may be placed on slopes between 0% and 25%, inclusive.

b. Absorption systems may be placed on slopes greater than 25% but not exceeding 35% if:

i. all other requirements of this rule can be met;

ii. effluent from the proposed system will not contaminate ground water or surface water, and will not surface or move off site before it is adequately treated to protect public health and the environment;

iii. no slope will fail, and there will be no other landslide or structural failure if the system is constructed and operated adequately, even if all properties in the vicinity are developed with onsite wastewater systems; and

iv. a report is submitted by a professional engineer or professional geologist that is licensed to practice in Utah. The report shall be imprinted with the engineer's or geologist's registration seal and signature and shall include the following.

(1) Predictions and supporting information of ground water transport from the proposed system and of expected areas of ground water mounding.

(2) A slope stability analysis that shall include information about the geology of the site and surrounding area, soil exploration and testing, and the effects of adding effluent.

(3) The cumulative effect on slope stability of added effluent if all properties in the vicinity were developed with onsite wastewater systems.

c. Absorption systems may not be placed on slopes greater than 35%.

5. Other Factors Affecting Onsite Wastewater System Feasibility.

a. The locations of all rivers, streams, creeks, dry or ephemeral washes, lakes, canals, marshes, subsurface drains, natural storm water drains, lagoons, artificial impoundments, either existing or proposed, that will affect building sites, shall be provided.

b. Areas proposed for onsite wastewater systems shall comply with the setbacks in Section R317-4-13 Table 2.

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

6. Unsuitable.

Where soil and other site conditions are clearly unsuitable for the placement of an onsite wastewater system, there is no need for conducting soil exploration pits or percolation tests.

C. Lot Size.

One of the following two methods shall be used for determining minimum lot size. Determination of minimum lot size by the regulatory authority would not preempt local governments from establishing larger minimum lot sizes.

1. Method 1.

The local health department having jurisdiction may determine minimum lot size. Under this method, local health departments may elect to involve other affected governmental entities and the division in making joint lot size determinations. The division will develop technical information, training programs, and provide engineering and geohydrologic assistance in making lot size determinations that will be available to local health departments upon their request. Individuals or developers requesting lot size determinations under this method will be required to submit to the local health department, at their own expense, a report that accurately takes into account at least the following factors:

a. soil type and depth;

b. area drainage, lot drainage, and potential for flooding;

c. protection of surface and ground waters;

d. setbacks from property lines, water supplies, etc.;

e. source of culinary water;

f. topography, geology, hydrology and ground cover;

g. availability of public sewers;

h. activity or land use, present and anticipated;

i. growth patterns;

j. individual and accumulated gross effects on water quality;

k. reserve areas for additional subsurface dispersal;

l. anticipated wastewater volume;

m. climatic conditions;

n. installation plans for wastewater system; and

o. area to be utilized by dwelling and other structures.

2. Method 2.

a. Whenever local health departments do not establish minimum lot sizes for single-family dwellings that will be served by onsite wastewater systems, the requirements of Section R317-4-13 Tables 1.1 and 1.2 shall be met.

b. For non-residential facilities, one-half of the buildable area of the lot must be available for the absorption system and replacement area.

i. The area required for the absorption system and replacement area may be adjusted during the permitting process.

4.2. Subdivision Onsite Wastewater System Feasibility Determination.

A. In addition to information in Subsection R317-4-4.1, the following information must be provided on a plat map:

1. the proposed street and lot layout with all lots consecutively numbered;

2. size and dimensions of each lot, with the minimum required area sufficient to permit the safe and effective use of an onsite wastewater system, including a replacement area for the absorption system;

3. location of all water lines;

4. location of any easements; and

5. areas proposed for wastewater dispersal, including replacement area.

B. Surface drainage systems shall be included on the plan, as naturally occurring, and as altered by roadways or any drainage, grading or improvement, installed or proposed by the developer. The details of the system shall show the surface drainage structures, whether ditches, pipes, or culverts, will in no way affect onsite wastewater systems on the property.

C. Each proposed lot shall have at least one soil exploration pit, percolation test, or both.

1. The regulatory authority may allow fewer tests based on the uniformity of prevailing soil and ground water characteristics and available percolation or soil log test data.

2. If soil conditions and surface topography indicate, a greater number of soil exploration pits or percolation tests may be required by the regulatory authority.

3. The location of all soil exploration pits and percolation test holes shall be clearly identified on the subdivision final plat and identified by a key number or letter designation.

4. The results of such soil tests, including stratified depths of soils and final percolation rates for each lot shall be recorded on or with the final plat.

5. Soil exploration pits and percolation tests shall be conducted as closely as possible to the dispersal system sites on the lots or parcels.

D. Whenever available, information from published soil studies of the area of the proposed subdivision shall be submitted for review.

E. If soil or site conditions exist in or near the project so as to complicate design and location of an onsite wastewater system, a detailed system layout shall be provided for those lots presenting the greatest design difficulty by meeting rules in Section R317-4-5.

4.3. Statement of Feasibility.

After review of all information, plans, and proposals, the regulatory authority shall make a written determination of feasibility stating the results of the review or the need for additional information.

A. An affirmative statement of feasibility for a subdivision does not imply that it will be possible to install onsite wastewater systems on all of the proposed lots, but shall mean that such onsite wastewater systems may be installed on the majority of the proposed lots in accordance with minimum state requirements and any conditions that may be imposed.

B. The regulatory authority shall establish the expiration, if any, of the statement of feasibility.

R317-4-5. Plan Review and Permitting.

5.1. Plan Review and Permitting.

A. Designer Certification.

All plans and specifications shall be prepared by an individual certified in accordance with Rule R317-11.

B. Domestic Wastewater.

Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems that receive domestic wastewater shall be submitted to the regulatory authority.

C. Non-Domestic Wastewater.

Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems that receive non-domestic wastewater shall be submitted to and approved by the local health department having jurisdiction and the division.

D. Construction Permit Required.

The regulatory authority shall review said plans and specifications as to their adequacy of design for the intended purpose, and shall, if necessary, require such changes as are required by these rules. When the reviewing regulatory authority is satisfied that plans and specifications are adequate for the conditions under which a system is to be installed and used, a construction permit shall be issued to the individual making the submittal.

1. Construction may not commence until the construction permit has been issued by the regulatory authority.

E. Information Required.

Plans submitted for review shall be drawn to scale, 1" = 10', 20' or 30', or other scale as approved by the regulatory authority. Plans shall be prepared in such a manner that the contractor can read and follow them in order to install the system properly. Depending on the individual site and circumstances, or as determined by the regulatory authority, some or all of the following information may be required.

1. Applicant Information.

a. The name, current address, and telephone number of the applicant.

b. Complete address, legal description of the property, or both to be served by this onsite wastewater system.

2. Onsite Wastewater System Site Plan.

a. Submittal date of plan.

b. North arrow.

c. Lot size and dimensions.

d. Legal description of property.

e. Ground surface contours, preferably at 2 foot intervals, of both the original and proposed final grades of the property, or relative elevations using an established bench mark.

f. Location and explanation of type of dwelling or structure to be served by an onsite wastewater system.

i. Maximum number of bedrooms, including statement of whether a finished or unfinished basement will be provided, or if other than a single family dwelling, the number of occupants expected and the estimated gallons of wastewater generated per day.

g. Location and dimensions of paved and unpaved driveways, roadways and parking areas.

h. Location and dimensions of the essential components of the wastewater system including the replacement area for the absorption system.

i. Location of all soil exploration pits and all percolation test holes.

j. Location of building sewer and water service line to serve the building.

k. Location of easements or drainage right-of-ways affecting the property.

l. Location of all intermittent or year-round streams, ditches, watercourses, ponds, subsurface drains, etc. within 100 feet of proposed onsite wastewater system.

m. The location, type, and depth of all existing and proposed non-public water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems and associated source protection zones.

n. Distance to nearest public water main and size of main.

o. Distance to nearest public sewer, size of sewer, and whether accessible by gravity.

3. Statement with Site Plan.

Statement indicating the source of culinary water supply, whether a well, spring, non-public or public system, its location and distances from all onsite wastewater systems within 200 feet.

4. Site Assessment and Soil Evaluation.

Soil Logs, Percolation Test Certificates, or both.

a. Statement with supporting evidence indicating the maximum anticipated ground water table and the flooding potential for onsite wastewater system sites.

5. Relative Elevations.

Show relative elevations of the following, using an established bench mark.

a. Building drain outlet.

b. The inlet and outlet inverts of any septic tanks.

c. Septic tank access cover, including height and diameter of riser, if used.

d. Pump tank inlet, if used, including height and diameter of riser.

e. The outlet invert of the distribution box, if provided, and the ends or corners of each distribution pipe lateral in the absorption system.

f. The final ground surface over the absorption system.

6. System Design.

Details for said site, plans, and specifications are listed in Section R317-4-6.

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

b. Septic tank and pump tank capacity, design, cross sections, etc., materials, and dimensions. If tank is commercially manufactured, state the name and address of manufacturer.

c. Absorption system details, including the following:

i. details of drop boxes or distribution boxes, if provided;

ii. schedule or grade, material, and diameter of distribution pipes;

iii. length, slope, and spacing of each absorption system component;

iv. maximum slope across ground surface of absorption system area;

v. distance of absorption system from trees, cut banks, fills, or subsurface drains; and

vi. cross section of absorption system showing the:

(1) depth and width of absorption system excavation;

(2) depth of distribution pipe;

(3) depth of filter material;

(4) barrier material, i.e. synthetic filter fabric, straw, etc., used to separate filter material from cover; and

(5) depth of cover.

d. Pump, if provided, details as referenced in Section R317-4-14 Appendix B.

e. If an alternative system is designed, include all pertinent information to allow plan review and permitting for compliance with this rule.

F. Plans Submitted.

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

2. Applications may be rejected if proper information is not submitted.

R317-4-6. Design Requirements.

6.1. System Location.

A. Onsite wastewater systems are not suitable in some areas and situations. Location and installation of each system shall be such that with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance, public health hazard, or endanger the quality of any waters of the state.

B. In determining a suitable location for the system, due consideration shall be given to such factors as:

1. the minimum setbacks in Section R317-4-13 Table 2;

2. size and shape of the lot;

3. slope of natural and final grade;

4. location of existing and future water supplies;

5. depth of ground water and bedrock;

6. soil characteristics and depth;

7. potential flooding or storm catchment;

8. possible expansion of the system; and

9. future connection to a public sewer system.

6.2. Minimum Setback Distances.

All systems, including the replacement area, shall conform to the minimum setback distances in Section R317-4-13 Table 2.

6.3. Maximum Ground Slope.

All absorption systems, including the replacement area, shall conform to the ground slope requirements in Section R317-4-4.

6.4 Estimates of Wastewater Quantity.

A. Single Family Dwellings.

A minimum of 300 gallons per day, 1 or 2 bedroom, and 150 gallons per day for each additional bedroom shall be used.

B. Non-Residential Facilities.

The quantity of wastewater shall be determined accurately, preferably by actual measurement. Metered water supply figures for similar installations can usually be relied upon, providing the non-disposable consumption, if any, is subtracted. Where this data is not available, the minimum design flow figures in Section R317-4-13 Table 3 shall be used to make estimates of flow.

C. Design Capacity.

In no event shall the anticipated maximum daily wastewater flow exceed the capacity for which a system is designed.

6.5. Non-Domestic Effluent.

Effluent shall be treated to levels at or below the defined parameters of non-domestic effluent before being discharged into an absorption system.

6.6. Building Sewer.

A. The building sewer shall have a minimum inside diameter of 4 inches and shall comply with the minimum standards in Section R317-4-13 Table 4.

1. If the sewer leaving the house is three inches, the building sewer may be three inches.

B. Building sewers shall be laid on a uniform minimum slope of not less than 1/4 inch per foot or 2.08% slope.

C. The building sewer shall have a minimum of one cleanout and cleanouts every 100 feet.

1. A cleanout is also required for each aggregate horizontal change in direction exceeding 135 degrees.

2. Ninety degree ells are not recommended.

D. Building sewers shall be separated from water service pipes in separate trenches, and by at least 10 feet horizontally, except that they may be placed in the same trench when all of the following conditions are met.

1. The bottom of the water service pipe, at all points, shall be at least 18 inches above the top of the building sewer.

2. The water service pipe shall be placed on a solid shelf excavated at one side of the common trench with a minimum clear horizontal distance of at least 18 inches from the sewer or drain line.

3. The number of joints in the water service pipe should be kept to a minimum, and the materials and joints of both the sewer and water service pipes shall be of strength and durability to prevent leakage under adverse conditions.

4. If the water service pipe crosses the building sewer, it shall be at least 18 inches above the latter within 10 feet of the

crossing. Joints in water service pipes should be located at least 10 feet from such crossings.

E. Building sewer placed under driveways or other areas subjected to heavy loads shall receive special design considerations to ensure against crushing or disruption of alignment.

6.7. Septic Tank.

All septic tanks shall meet the requirements of Section R317-4-14 Appendix A and be approved by the division. Septic tanks shall be constructed of sound, durable, watertight materials that are not subject to excessive corrosion, frost damage, or decay. They shall be designed to be watertight, and to withstand all expected physical forces.

A. Liquid capacity.

1. A septic tank that serves a non-residential facility shall have a liquid capacity of at least 1-1/2 times the designed daily wastewater flow. In all cases the capacity shall be at least 1,000 gallons.

2. The capacity of a septic tank that serves a single family dwelling shall be based on the number of bedrooms that can be anticipated in the dwelling served, including the unfinished space available for conversion as additional bedrooms. Unfinished basements shall be counted as a minimum of one additional bedroom.

a. The minimum liquid capacity of the tank shall be 1,000 gallons for up to three bedroom homes.

b. The minimum liquid capacity of the tank shall be 1,250 gallons for four bedroom homes.

c. Two hundred fifty gallons per bedroom shall be added to the liquid capacity of the tank for each additional bedroom over four bedrooms.

3. The regulatory authority may require a larger capacity than specified in this subsection as needed for unique or unusual circumstances.

B. Tanks in Series.

1. No tank in the series shall be smaller than 1,000 gallons.

2. The capacity of the first tank shall be at least two-thirds of the required total septic tank volume. If compartmented tanks are used, the compartment of the first tank shall have this two-thirds capacity.

3. The connecting pipes between each successive tank shall meet the slope requirements of the building sewer and shall be unrestricted except for the inlet to the first tank and the outlet for the last tank.

C. Maximum Number of Tanks or Compartments.

The maximum number of tanks and compartments in series may not exceed three.

D. Inlets and Outlets.

Inlet or outlet devices shall conform to the following:

1. Approved tanks with offset inlets may be used where they are warranted by constraints on septic tank location.

2. Multiple outlets from septic tanks shall be prohibited unless preauthorized by the regulatory authority.

3. A gas deflector may be added at the outlet of the tank to prevent solids from entering the outlet pipe of the tank.

E. Effluent Screens.

All septic tanks may have an effluent screen installed at the outlet of the terminal tank. The screen shall prevent the passage of solid particles larger than a nominal 1/8 inch diameter sphere. The screen shall be easily removable for routine servicing by installing a riser to the ground surface, with an approved cover. Effluent screens are required for non-domestic wastewater systems, unless screening is achieved by some other means acceptable to the regulatory authority.

F. Access to Tank Interior.

Adequate access to the tank shall be provided to facilitate inspection, pumping, servicing, and maintenance, and shall have no structure or other obstruction placed over it and shall conform to all of the following requirements.

1. Riser Heights.

Watertight risers are required, extending to within 6 inches of the surface of the ground when soil covering the septic tank is greater than 6 inches. Preferably, the riser should be brought up to the final grade to encourage periodic servicing and maintenance.

a. If a septic tank is located under paving or concrete, risers shall be extended up through the paving or concrete.

b. If non-domestic wastewater is generated, risers shall be extended to the final grade.

2. Riser Diameter.

The inside diameter of the riser shall be a minimum of 20 inches.

3. Riser Covers.

Riser covers shall be designed and constructed in such a manner that:

a. they cannot pass through the access openings;

b. when closed will be child-proof;

c. will prevent entrance of surface water, dirt, or other foreign materials; and

d. seal odorous gases in the tank.

4. Riser Construction.

The risers shall be constructed of durable, structurally sound materials that are approved by the regulatory authority and designed to withstand expected physical loads and corrosive forces.

5. Multiple Risers Required.

When the tank capacity exceeds 3,000 gallons, a minimum of two access risers shall be installed.

G. Other Requirements.

Tank installation shall conform to all of the following requirements.

1. Ground Water.

a. Septic tanks located in high groundwater areas shall be designed with the appropriate weighted or anti-buoyancy device to prevent flotation in accordance with the manufacturer's recommendations.

b. The building sewer inlet of the tank may not be installed at an elevation lower than the highest anticipated groundwater elevation.

i. If the tank serves a mound or packed bed alternative system and has an electronic control panel capable of detecting water intrusion the building sewer inlet of the tank may be installed below the maximum anticipated groundwater elevation.

(1) Any component below the anticipated maximum ground water elevation shall be water tightness tested.

2. Depth of Septic Tank.

The minimum depth of cover over the septic tank shall be at least 6 inches and a maximum of 48 inches at final grading. For

unusual situations, the regulatory authority may allow deeper burial provided the following conditions are met.

a. The tank shall be approved by the division for the proposed depth and burial cover load.

b. Risers shall:

i. be installed over the access openings of the inlet and outlet baffles or sanitary tees; and

ii. conform to Subsection R317-4-6.7.F, except risers shall be at least 24 inches in diameter.

6.8. Grease Interceptor Tanks.

A grease interceptor tank or automatic grease removal device may be required by the regulatory authority to receive the drainage from fixtures and equipment with grease-laden waste. It shall be sized according to the current Plumbing Code.

A. Accessibility and Installation.

Tanks installed in the ground shall conform to Subsection R317-4-6.7.F for accessibility and installation, except risers are required and shall be brought to the surface of the ground. All interior compartments shall be accessible for inspecting, servicing, and pumping.

6.9. Pump and Recirculation Tanks.

A. Tanks shall be constructed of sound, durable, watertight materials that are not subject to excessive corrosion, frost damage, or decay. They shall be designed to be watertight, and to withstand all expected physical forces.

B. Pump tank volume shall have a liquid capacity adequate for the minimum operating volume that includes the dead space, dosing volume, and surge capacity, and shall have the emergency operation capacity of:

1. storage capacity for the system design daily wastewater flow;

2. at least two independent power sources with appropriate wiring installed; or

3. other design considerations approved by the regulatory authority that do not increase public health risks in the event of pump failure.

C. Accessibility and Installation.

Tanks shall conform to Subsection R317-4-6.7.F for accessibility and installation, except risers are required and shall be brought to the surface of the ground. All interior compartments shall be accessible for inspecting, servicing, and pumping.

D. Outlets of septic tanks upstream of pump tanks shall be fitted with an effluent screen, unless a pump vault is used in a pump tank.

6.10. Pump Vaults.

Pump vaults may be used when approved by the regulatory authority.

A. The vault shall be constructed of durable material and resistant to corrosion.

B. The vault shall have an easily accessible screen with 1/8 inch openings or smaller.

C. All components of the vault shall be accessible from the surface.

D. When a pump vault is used in a septic tank:

1. The tank size shall be increased by the larger of the following:

a. two hundred fifty gallons; or

b. ten percent of the required capacity of the tank.

2. At least two independent power sources with appropriate wiring shall be installed.

3. The maximum drawdown within the tank shall be no more than 3 inches per dose.

6.11. Pumps.

See Section R317-4-14 Appendix B for details.

6.12. Sampling Ports.

When a system is required to have effluent sampling or receives non-domestic wastewater, the system shall include a sampling port at an area approved by the regulatory authority capable of sampling effluent prior to the absorption system.

6.13. Effluent Sewer.

A. The effluent sewer shall have a minimum inside diameter of 4 inches and shall comply with the minimum standards in Section R317-4-13 Table 4.

B. The effluent sewer shall extend at least 5 feet beyond the septic tank before entering the absorption system.

C. Effluent sewers shall be laid on a uniform minimum slope of not less than 1/4 inch per foot or 2.08% slope. When it is impractical, due to structural features or the arrangement of any building, to obtain a slope of 1/4 inch per foot, a sewer pipe of 4 inches in diameter or larger may have a slope of not less than 1/8 inch per foot or 1.04% slope when approved by the regulatory authority.

D. The effluent sewer lines shall have cleanouts at least every 100 feet.

E. Effluent sewer placed under driveways or other areas subjected to heavy loads shall receive special design considerations to ensure against crushing or disruption of alignment.

6.14. Absorption Systems.

A. System Types.

1. Absorption Trenches.

a. Standard Trenches.

b. Chambered Trenches.

c. Bundled Synthetic Aggregate Trenches.

2. Absorption Beds.

3. Deep Wall Trenches.

4. Seepage Pits.

B. General Requirements.

1. Replacement Area for Absorption Systems.

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

a. In lieu of a replacement area, two complete absorption systems shall be installed with a diversion valve. The valve shall be accessible from the final grade. The valve should be switched at least annually.

2. Protection of Absorption Systems.

The site of the initial and replacement absorption system may not be covered by asphalt, concrete, or structures, or be subject to vehicular traffic, or other activity that would adversely affect the soil, such as construction material storage, soils storage, etc. This protection applies before and after construction of the onsite wastewater system.

3. Sizing Criteria for Absorption Systems.

Absorption systems shall be sized based on Section R317-4-13 Table 5 or 6.

4. Design Criteria for Absorption Systems.

Many different designs may be used in laying out absorption systems, the choice depending on the size and shape of the available areas, the capacity required, and the topography of the dispersal area.

a. Horizontal Setbacks.

Absorption systems shall comply with the setbacks in Section R317-4-13 Table 2.

b. Sloping Ground.

Absorption systems placed in 10% or greater sloping ground shall be designed so that there is a minimum of 10 feet of undisturbed earth measured horizontally from the bottom of the distribution line to the ground surface. This requirement does not apply to drip irrigation.

c. Undisturbed Natural Earth.

That portion of absorption systems below the top of distribution pipes shall be in undisturbed natural earth.

d. Tolerance.

All piping, chambers, and the bottoms of absorption system excavations shall be designed level.

e. Distribution Pipe.

Distribution pipe for gravity-flow absorption systems shall be 4 inches in diameter and shall comply with the minimum standards in Section R317-4-13 Table 4.

i. The pipe shall be penetrated by at least two rows of round holes, each 1/2 inch in diameter, and located at approximately 6 inch intervals. The perforations should be located at about the five o'clock and seven o'clock positions on the pipe.

ii. The open ends of the pipes shall be capped.

f. Absorption System Laterals.

Absorption system laterals should be designed to receive proportional flows of wastewater.

g. Drain Media Protection.

Drain media shall be covered with a barrier material before being covered with earth backfill.

h. Prohibitions.

i. In gravity-flow absorption systems with multiple distribution lines, the effluent sewer may not be in direct line with any one of the distribution pipes, except where drop boxes or distribution boxes are used.

ii. Any section of distribution pipe laid with non-perforated pipe may not be considered in determining the required absorption area.

iii. Perforated distribution pipe may not be placed under driveways or other areas subjected to heavy loads.

i. Exceptions.

Deep wall trenches and filled seepage pits may be allowed beneath unpaved driveways on a case-by-case basis by the regulatory authority, if the top of the distribution pipe is at least 3 feet below the final ground surface.

C. Effluent Distribution Devices.

1. Distribution Boxes.

Distribution boxes may be used on level or nearly level ground. They shall be watertight and constructed of durable, corrosion resistant material. They shall be designed to accommodate the inlet pipe and the necessary distribution lines.

a. The outlet inverts of the distribution box shall be not less than 1 inch below the inlet invert.

b. Distribution boxes shall have risers brought to final grade.

2. Drop Boxes.

Drop boxes shall be watertight and constructed of durable, corrosion resistant material and may be used to distribute effluent within the absorption system and shall meet the following requirements:

a. Drop boxes shall be designed to accommodate the inlet pipe, an outlet pipe leading to the next drop box, except for the last drop box, and one or two distribution pipes leading to the absorption system.

b. The inlet pipe to the drop box shall be at least 1 inch higher than the outlet pipe leading to the next drop box.

c. The invert of the distribution pipes shall be 1 through 6 inches below the outlet invert. If there is more than one distribution pipe, their inverts shall be at exactly the same elevation.

d. Drop boxes shall have risers brought to final grade.

3. Effluent Pump to Absorption System.

a.. If a pump is used to lift effluent to an absorption system, the pump tank or pump vault shall meet the requirements of Subsection R317-4-6.9 or R317-4-6.10 and the pump and controls shall meet the requirements of Section R317-4-14 Appendix B.

b. Pumping to an absorption system may not warrant any reductions to the absorption area.

4. Other Devices.

Tees, wyes, ells, or other distributing devices may be used as needed to permit proportional flow to the branches of the absorption system.

D. Effluent Distribution Methods.

1. Closed Loop.

In locations where the slope of the ground over the absorption system area is relatively flat, the trenches should be interconnected to produce a closed loop system and the trenches shall be installed at the same elevations.

2. Non-Closed Loop.

If a non-closed loop design is used, effluent shall be proportionally distributed to each lateral.

3. Serial or Sequential.

Serial or sequential distribution may be used in absorption systems designed for sloping areas, or where absorption system elevations are not equal.

a. Serial trenches shall be connected with a drop box or watertight overflow line in such a manner that a trench will be filled before the effluent flows to the next lower trench.

b. The overflow line shall be a 4-inch solid pipe with direct connections to the distribution pipes. It should be laid in a trench excavated to the exact depth required. Care must be exercised to ensure a block of undisturbed earth remains between trenches. Backfill should be carefully tamped.

4. Pressure Distribution.

a. General Requirements.

i. Conformance to Applicable Requirements.

All requirements stated elsewhere in this rule for design, setbacks, construction and installation details, performance, repairs, and abandonment shall apply.

ii. Design Criteria.

All systems that use this method shall be designed by a person certified at Level 3 in accordance with Rule R317-11.

(1) The designer shall submit details of all system components with the necessary calculations.

(2) The designer shall provide to the local health department and to the owner operation and maintenance instructions that include the minimum inspection levels in Section R317-4-13 Table 7 for the system.

iii. Record in the Chain of Title.

When a system utilizing pressure distribution exists on a property, notice of the existence of that system shall be recorded in the chain of title for that property.

b. Design.

i. Pressure distribution may be permitted on any site meeting the requirements for an onsite wastewater system if conditions in this rule can be met.

ii. Pressure distribution should be considered when:

(1) effluent pumps are used;

(2) the flow from the dwelling or structure exceeds 3,000 gallons per day;

(3) soils are a Type 1 or have a percolation rate faster than five minutes per inch; or

(4) soils are a Type 5 or have a percolation rate slower than 60 minutes per inch.

iii. The Utah Guidance for Performance, Application, Design, Operation & Maintenance: Pressure Distribution Systems document shall be used for design requirements, along with the following:

(1) Dosing pumps, controls and alarms shall comply with Section R317-4-14 Appendix B.

(2) Pressure distribution piping.

(a) All pressure transport, manifold, lateral piping, and fittings shall meet PVC Schedule 40 standards or equivalent.

(b) The ends of lateral piping shall be constructed with sweep elbows or an equivalent method to bring the end of the pipe to final grade. The ends of the pipe shall be provided with threaded plugs, caps, or other devices acceptable to the regulatory authority to allow for access and flushing of the lateral.

E. Design of Absorption Systems.

i. An absorption system shall be designed to approximately follow the ground surface contours so that variation in excavation depth will be minimized. The excavations could be installed at different elevations, but the bottom of each individual excavation shall be level throughout its length.

ii. Absorption systems should be constructed as shallow as is possible to promote treatment and evapotranspiration.

iii. Observation ports may be placed to observe the infiltrative surfaces of the trenches or beds.

1. Absorption Trenches.

a. Absorption trenches shall conform to the following:

i. The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.

ii. The effective absorption area of absorption trenches shall be calculated as the total bottom area of the excavated trench system in square feet.

iii. Minimum number of absorption trenches: 2.

iv. Maximum length of absorption trenches, not including connecting trenches: 150 feet.

v. Minimum spacing of absorption trenches from wall to wall: 7 feet.

vi. Minimum width of absorption trench excavations: 24 inches.

vii. Maximum width of absorption trench excavations: 36 inches.

viii. Minimum depth of absorption trench excavations below original, natural grade: 10 inches.

ix. Minimum depth of soil cover over the absorption trenches: 6 inches.

x. Minimum separation from the bottom of the absorption trenches to:

(1) the anticipated maximum ground water table: 24 inches; and

(2) unsuitable soil or bedrock formations: 48 inches.

b. Standard Trenches.

Standard trenches shall conform to the following:

i. Top of distribution pipe may not be installed above original, natural grade.

ii. The distribution pipe shall be centered in the absorption trench and placed the entire length of the trench.

iii. Drain media shall extend the full width and length of the trenches to a depth of at least: 12 inches.

iv. Minimum depth of drain media under the distribution pipe: 6 inches.

v. Minimum depth of drain media over the distribution pipe: 2 inches.

vi. Minimum depth of cover over the barrier material: 6 inches.

c. Chambered Trenches.

Chambered trenches shall conform to the following:

i. All chambers shall meet International Association of Plumbing and Mechanical Officials (IAPMO) Standard PS 63-2005, which is hereby incorporated into this rule by reference.

ii. The minimum required effective absorption area of chambered trenches shall be calculated:

(1) for Type A Chambers as: 36 inches; and

(2) for Type B Chambers as: 24 inches;

(3) using Section R317-4-13 Table 5 or 6 and may be reduced by: 30%.

iii. The chambered trenches shall be designed and installed in conformance with manufacturer recommendations, as modified by these rules.

iv. Type A Chambers.

(1) Minimum width of chambers: 30 inches.

(2) Maximum width of trench excavations: 36 inches.

v. Type B Chambers.

(1) Minimum width of chambers: 22 inches.

(2) Maximum width of trench excavations: 24 inches.

vi. Minimum elevation of the inlet pipe invert from the bottom of the chamber: 6 inches.

vii. All chambers shall have a splash plate under the inlet pipe or another design feature to avoid unnecessary channeling into the trench bottom.

viii. Inlet and outlet effluent sewer pipes shall enter and exit the chamber endplates.

ix. Minimum depth of cover over the chambers: 12 inches.

d. Bundled Synthetic Aggregate Trenches.

Bundled synthetic aggregate trenches shall conform to the following.

i. All synthetic aggregate bundles shall meet IAPMO Standards for the General, Testing and Marking & Identification of the guide criteria for Bundled Expanded Polystyrene Synthetic Aggregate Units.

ii. The effective absorption area of bundled synthetic aggregate trenches shall be calculated as the total bundle length times the total bundle width in square feet.

iii. The bundled synthetic aggregate trenches shall be designed and installed in conformance with manufacturer recommendations, as modified by these rules.

iv. Only 12-inch diameter bundles are approved in this rule.

(1) For bundles with perforated pipe the minimum depth of synthetic aggregate under pipe: 6 inches.

v. Width of trenches.

(1) When designed for a 3 foot wide trench, three bundles are laid parallel to each other with the middle bundle containing perforated pipe.

(2) When designed for a 2 foot wide trench, two bundles are placed on the bottom, with one bundle containing perforated pipe.

vi. Minimum depth of cover over the bundles: 12 inches.

2. Absorption Beds.

Absorption beds shall conform to the requirements applicable to absorption trenches, except for the following.

a. The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.

b. The effective absorption area of absorption beds shall be considered as the total bottom area of the excavated bed system in square feet.

c. Absorption beds may be built over naturally existing soil types per Section R317-4-13 Table 5 or 6.

d. The bottom of the entire absorption bed shall be level.

e. The distribution pipes or chambers shall be interconnected to produce a closed loop distribution system.

f. Minimum number of laterals in an absorption bed: 2.

g. Maximum length of laterals in an absorption bed: 150 feet.

h. Maximum distance between laterals: 6 feet.

i. Minimum distance between laterals and sidewalls: 1 foot.

j. Maximum distance between laterals and sidewalls: 3 feet.

k. Minimum distance between absorption beds: 7 feet.

l. Minimum depth of an absorption bed excavation from original, natural grade: 10 inches.

m. Absorption beds with drain media:

i. Minimum depth of drain media under distribution pipe: 6 inches.

ii. Minimum depth of drain media over distribution pipe: 2 inches.

iii. Minimum depth of cover over the barrier material: 6 inches.

n. Absorption beds with chambers:

i. Chambers shall be installed with sides touching, no separation allowed.

ii. All chambers shall be connected in a closed loop distribution system.

iii. The outlet side of the chamber runs shall be connected through the bottom port of the end plates.

iv. No absorption area reduction factor shall be given for using chambers in absorption beds.

v. Minimum depth of cover over the chambers: 12 inches.

3. Deep Wall Trenches.

Deep wall trenches shall conform to the following:

a. The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.

b. The effective absorption area of deep wall trenches shall be calculated using the total trench vertical sidewall area below the distribution pipe. The bottom area and any highly restrictive or impervious strata or bedrock formations may not be considered in determining the effective sidewall absorption area.

c. If percolation tests are used, they shall be conducted in accordance with Section R317-4-14 Appendix D and in the most restrictive soil horizon.

d. Maximum length of trenches: 150 feet.

i. Does not include connecting trenches.

e. Minimum spacing of trenches from wall to wall: 12 feet,

or three times the depth of the media under the distribution pipe, whichever is the larger distance.

f. Vertical depth of trenches.

i. Minimum effective sidewalls: 2 feet.

ii. Maximum effective sidewalls: 10 feet.

iii. Calculate using only suitable soil formation.

g. Minimum width of trench excavations: 24 inches.

h. Minimum separation from the bottom of deep wall trench to:

i. the anticipated maximum ground water table: 48 inches;

ii. unsuitable soil or bedrock formations: 48 inches.

i. Drain media shall cover the coarse drain media to permit leveling of the distribution pipe and shall extend the full width and length of the trenches.

i. Minimum depth of drain media: 12 inches.

ii. Minimum depth of drain media under the distribution pipe: 6 inches.

iii. Minimum depth of drain media over the distribution pipe: 2 inches.

j. Minimum depth of cover over the barrier material: 6 inches.

k. The distribution pipe shall be centered in the trench and placed the entire length of the trench.

4. Seepage Pits.

Seepage pits shall be considered as modified deep wall trenches and shall conform to the requirements applicable to deep wall trenches, except for the following:

a. The effective absorption area of seepage pits shall be calculated using the total pit vertical sidewall area below the distribution pipe. The bottom area and any highly restrictive or impervious strata or bedrock formations may not be considered in determining the effective sidewall absorption area.

b. Minimum diameter of pits: 3 feet.

c. Vertical depth of pits.
i. Minimum effective sidewalls: 4 feet.
ii. Maximum effective sidewalls: 10 feet.
iii. Calculate using only suitable soil formation.
d. Filled Seepage Pits.
i. In pits filled with coarse drain media, the perforated distribution pipe shall run across each pit. A layer of drain media shall be used for leveling the distribution pipe.
ii. The entire pit shall be completely filled with coarse drain media to at least the top of any permeable soil formation to be calculated as effective sidewall absorption area.
e. Hollow-Lined Seepage Pits.
i. For hollow-lined pits, the inlet pipe shall extend horizontally at least 1 foot into the pit.
ii. The annular space between the lining and excavation wall shall be filled with crushed rock or gravel ranging from 3/4 through 6 inches in diameter and free of fines, sand, clay or organic material. The maximum fines in the gravel shall be 2% by weight passing through a US Standard #10 mesh or 2.0 millimeter sieve.
iii. Minimum width of annular space between lining and sidewall: 12 inches.
iv. Minimum thickness of reinforced perforated concrete liner: 2-1/2 inches.
v. Minimum thickness of reinforced concrete top: 6 inches.
vi. Minimum depth of drain media in pit bottom: 6 inches.
vii. Minimum depth of cover over seepage pit top: 6 inches.
viii. A reinforced concrete top shall be provided.
(1) When the cover over the seepage pit top exceeds 6 inches, risers shall conform to Subsection R317-4-6.7.F for accessibility.
6.15. Alternative Systems.
A. System Types.
1. At-Grade.
2. Mounds.
3. Packed Bed Media.
a. Intermittent Sand Filters.
b. Recirculating Sand Filters.
c. Recirculating Gravel Filters.
d. Textile Filters.
e. Peat Filters.
4. Sand Lined Trenches.
B. General Requirements.
1. Conformance to Applicable Requirements.
All requirements stated elsewhere in this rule for design, setbacks, construction and installation details, performance, repairs and abandonment shall apply unless stated differently for a given alternative system.
2. Sizing Criteria for Alternative Systems.
Absorption area shall be sized based on Section R317-4-13 Table 5 or 6 except as specified in this section.
3. Design Criteria for Alternative Systems.
All alternative systems shall be designed by a person certified at Level 3 in accordance with Rule R317-11.
a. The designer shall submit details of all system components with the necessary calculations.
b. The designer shall provide to the local health department and to the owner operation and maintenance instructions that include the minimum inspection levels in Section R317-4-13 Table 7 for the system.
4. Record in the Chain of Title.
When an alternative system exists on a property, notice of the existence of that system shall be recorded in the chain of title for that property.
C. Design of Alternative Systems.
1. At-Grade Systems.
Absorption trenches and absorption beds may be used in at-grade systems. At-grade systems shall conform to the requirements applicable to absorption trenches and absorption beds, except for the following:
a. Horizontal setbacks in Section R317-4-13 Table 2 are measured from edge of sidewall trench, with the exception of property lines, where the toe of the final cover shall be 5 feet or greater in separation distance to a property line.
b. Minimum number of observations ports provided within absorption area: 2.
i. The ports shall be installed to the depth of the trench or bed.
c. Depth of absorption excavations below natural grade: 0-10 inches.
d. Minimum cover over the absorption area: 6 inches.
e. Maximum slope of natural ground surface: 4%.
f. The maximum side slope for above ground fill shall be four horizontal to one vertical: 25% slope.
g. Where final contours are above the natural ground surface, the cover shall extend from the center of the wastewater system at the same general top elevation for a minimum of 10 feet in all directions beyond the limits of the absorption area perimeter, before beginning the side slope.
2. Mound Systems.
Mound systems shall conform to the following:
a. The design shall generally be based on the Wisconsin Mound Soil Absorption System: Siting, Design and Construction Manual, January 2000 published by the University of Wisconsin-Madison Small-Scale Waste Management Project, with the following exceptions.
i. The minimum separation distance between the natural ground surface and the anticipated maximum ground water table: 12 inches.
ii. Mound systems may be built over naturally existing soil types per Section R317-4-13 Table 5 or 6 provided the minimum depth of suitable soil is:
(1) between the natural ground surface and bedrock formations or unsuitable soils: 36 inches; or
(2) above soils that have a percolation rate faster than one minute per inch: 24 inches.
iii. The minimum depth of sand media over natural soil: 12 inches.
iv. The maximum slope of natural ground surface: 25 %.
v. The separation distances in Section R317-4-13 Table 2 are measured from the toe of the final cover.
vi. The effluent loading rate at the sand media to natural soil interface shall be calculated using Section R317-4-13 Table 5 or 6.

vii. The effluent entering a mound system shall be at levels at or below the defined parameters of non-domestic effluent.

viii. The minimum thickness of aggregate media around the distribution pipes of the absorption system shall be the sum of 6 inches below the distribution pipe, the diameter of the distribution pipe and 2 inches above the distribution pipe or 10 inches, whichever is larger.

ix. The cover may not be less than 6 inches in thickness, and shall provide protection against erosion, frost, storm water infiltration and support vegetative growth and aeration of distribution cell.

x. A minimum of three observation ports shall be located within the mound at each end and the center of the distribution cell.

(1) At least one port shall be installed at the gravel-sand interface, and one port at the sand-soil interface.

b. Mounds shall use pressure distribution.

i. The Utah Guidance for Performance, Application, Design, Operation & Maintenance: Pressure Distribution Systems document and Subsection R317-4-6.14.D.4 shall be used for design requirements.

(1) See Section R317-4-14 Appendix B for pump and control requirements.

3. Packed Bed Media Systems.

Packed bed media systems shall conform to the following:

a. System Design Criteria.

i. Wastewater Design Flows.

(1) For single-family dwellings the design shall be based on a minimum of 300 gallons per day for two bedrooms and 100 gallons per day for each additional bedroom.

(2) All other flow estimates shall be based on Subsection R317-4-6.4.

(3) Special design considerations shall be given for non-domestic effluent.

ii. Effluent Distribution.

Effluent shall be uniformly distributed over the filter media using pressure distribution.

b. Absorption System Requirements.

Absorption systems shall conform to the following:

i. Siting Conditions.

Packed bed media absorption systems may be sited under the following conditions:

(1) The minimum separation distance between the natural ground surface and the anticipated maximum ground water table: 12 inches.

(2) Packed bed media absorption systems may be built over naturally existing soil types per Section R317-4-13 Table 5 or 6 provided the minimum depth of suitable soils:

(a) above soils that have a percolation rate faster than one minute per inch: 24 inches; and

(b) between the natural ground surface and bedrock formations or unsuitable soils: 36 inches; or

(c) between the natural ground surface and bedrock formations or unsuitable soils: 18 inches based on an evaluation of infiltration rate and hydrogeology from a professional geologist or engineer that is certified at the appropriate level to perform onsite wastewater system design and having sufficient experience in geotechnical engineering based on:

(i) type, extent of fractures, presence of bedding planes, angle of dip;

(ii) hydrogeology of surrounding area; and

(iii) cumulative effect of all existing and future systems within the area for any localized mounding or surfacing that may create a public health hazard or nuisance, description of methods used to determine infiltration rate and evaluations of surfacing or mounding conditions.

(3) A non-chemical disinfection unit, capable of meeting laboratory testing parameters in Table 7.3, and a maintenance schedule consistent to Section R317-4-13 Tables 7.1 and 7.3, shall be used in excessively permeable soils.

(4) Conformance with the minimum setback distances in Section R317-4-13 Table 2, except for the following that require a minimum of 50 feet of separation:

(a) watercourses, lakes, ponds, reservoirs;

(b) non-culinary springs or wells;

(c) foundation drains, curtain drains; or

(d) non-public culinary grouted wells, constructed as required by Title R309.

ii. Sizing Criteria.

The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6 and may be reduced by: 30%.

(1) The use of chambered trenches with a packed bed media system may not receive additional reductions as allowed in Subsection R317-4-6.14.E.1.c.

iii. Separation from Ground Water Table.

The bottom of the absorption system shall have a vertical separation distance of at least 12 inches from the anticipated maximum ground water table.

iv. Observation Ports.

A minimum of two observation ports shall be provided within the absorption area.

v. Drip Irrigation.

Drip irrigation absorption may be used for packed bed media absorption system effluent dispersal based on type of soil and drip irrigation manufacturer's recommendations.

(1) Materials shall be specifically designed and manufactured for onsite wastewater applications.

(2) Non-absorption components shall be installed per Section R317-4-6 and Section R317-4-13 Table 2.

c. Intermittent Sand Filter Systems.

i. Media.

Either sand media or sand fill as described below may be used.

(1) Minimum depth of sand media: 24 inches.

(2) Minimum depth of sand fill: 24 inches.

(a) Effective size: 0.35-0.5 millimeter.

(b) Uniformity coefficient: less than 4.0.

(c) Maximum fines passing through #200 sieve: 1%.

ii. Maximum application rate per day per square foot of media surface area:

(1) Sand media: 1.0 gallons.

(2) Sand fill: 1.2 gallons.

iii. Maximum dose volume through any given orifice for each dosing: 2 gallons.

iv. Effluent entering an intermittent sand filter shall be at levels at or below the defined parameters of non-domestic effluent.

c. Recirculating Sand Filter (RSF) Systems.

i. Media.

(1) Minimum depth of washed sand: 24 inches.
(2) Effective size: 1.5-2.5 millimeter.
(3) Uniformity coefficient: less than 3.0.
(4) Maximum fines passing through #50 sieve: 1%.
ii. Maximum application rate per day per square foot of media surface area: 5 gallons.
d. Recirculating Gravel Filter (RGF) Systems.
i. Media.
(1) Minimum depth of washed gravel: 36 inches.
(2) Effective size: 2.5-5.0 millimeter.
(3) Uniformity Coefficient: less than 2.0.
(4) Maximum fines passing through #16 sieve: 1%.
ii. Maximum application rate per day per square foot of media surface area: 15 gallons.
e. Textile Filter Systems.
i. Media shall be geotextile, AdvanTex, or an approved equal.
ii. Maximum application rate per day per square foot of media surface area: 30 gallons.
f. Peat Filter Systems.
i. Minimum depth of peat media: 24 inches.
ii. Maximum application rate per day per square foot of media surface area: 5 gallons.
4. Sand Lined Trench Systems.
Sand lined trench systems shall conform to the following:
a. Siting Conditions.
i. The minimum depth of suitable soil or saprolite between the sand media in trenches and the anticipated maximum ground water table: 12 inches.
ii. Sand lined trench systems may be built over naturally existing:
(1) soil types 1 through 4; or
(2) soils or saprolite with a percolation rate between 1 and 60 minutes per inch.
iii. The minimum depth of suitable soil or saprolite is:
(1) between the sand media in trenches and bedrock formations or unsuitable soils: 36 inches; or
(2) above soils or saprolite that have a percolation rate faster than one minute per inch: 24 inches.
c. Trench Requirements.
Sand lined trenches shall conform to the requirements applicable to absorption trenches except for the following:
i. Trenches in Suitable Soil.
The minimum required effective absorption area shall be calculated using Section R317-4-13 Table 5 or 6.
ii. Trenches in Saprolite.
The minimum required effective absorption area shall be based on percolation rate using Section R317-4-13 Table 5.
(1) This rate shall be determined by conducting percolation tests. The soil shall be allowed to swell not less than 24 hours or more than 30 hours.
iii. The use of chambered trenches with a sand media system may not receive additional reductions as allowed in Subsection R317-4-6.14.E.1.c.
iv. Width of absorption trench excavations: 36 inches.
v. The entire trench sidewall shall be installed in natural ground. At-Grade system designs are not allowed.
vi. Minimum depth of sand media: 24 inches.
vii. Sand lined trenches with drain media.
(1) Minimum depth of drain media under the pressure lateral distribution pipe: 6 inches.
(2) Minimum depth of drain media over pressure lateral distribution pipe: 2 inches.
(3) Minimum depth of soil cover or saprolite over drain media: 6 inches.
viii. Sand lined trenches with Type A chambers.
(1) Minimum depth of soil cover or saprolite over chambers: 12 inches.
ix. Minimum number of observation ports per trench: 1.
c. Effluent Distribution.
Effluent shall be uniformly distributed over the sand media using pressure distribution.
i. Design shall generally be based on the Utah Guidance for Performance, Application, Design, Operation & Maintenance: Pressure Distribution Systems document.

R317-4-7. Construction and Installation.

7.1. System Installation.
A. Approved Plans.
The installer may not deviate from the approved plans or conditions of the construction permit without the approval of the designer and the reviewing regulatory authority.
B. Installation Restrictions.
A regulatory authority may limit the time period or area in which a system can be installed to ensure that soil conditions, weather, groundwater, or other conditions do not adversely affect the reliability of the system.
C. General Requirements.
1. Prior to installation, all minimum setback distances shall be field verified.
2. All absorption areas shall be protected prior to and during site construction.
3. The regulatory authority may require a temporary barrier around the absorption area, including the replacement area for additional protection prior to and during any site construction. If necessary, a more permanent barrier may be required following construction.
4. All absorption excavations and piping shall be level within a tolerance of plus or minus 1 inch. The overall slope from effluent entry to terminus shall be no more than 4 inches per hundred feet.
5. Absorption system excavations shall be made such that the soil in the bottom and sides of the excavation is not compacted. Strict attention shall be given to the protection of the natural absorption properties of the soil.
6. Absorption systems may not be excavated when the soil is wet enough to smear or compact easily.
7. All smeared or compacted surfaces should be raked to a depth of 1 inch, and loose material removed before the absorption system components are placed in the excavation.
8. Open absorption system excavations shall be protected from surface runoff to prevent the entrance of silt and debris.
9. Absorption systems shall be backfilled with earth that is free from stones 10 inches or more in diameter.
10. Distribution pipes may not be crushed or misaligned during backfilling. When backfilling, the earth shall be mounded slightly above the surface of the ground to allow for settlement and prevent depressions for surface ponding of water.

11. Final grading shall prevent ponding throughout the entire system area and promote surface water runoff.

12. Heavy wheeled equipment may not be driven in or over absorption systems prior to or during construction or backfilling.

D. Building and Effluent Sewer.

1. Pipe, pipe fittings, and similar materials comprising building and effluent sewers shall conform to the applicable standards as outlined in Section R317-4-13 Table 4.

2. Each length of pipe shall be stamped or marked as required by the International Plumbing Code.

3. Where two different sizes or types of pipe are connected, a proper type of fitting or conversion adapter shall be used.

4. All sewers:

a. shall have watertight, root-proof joints; and

b. may not receive any ground water or surface runoff.

5. Pipes shall be installed on a foundation of undisturbed earth, or stabilized earth that is not subject to settling.

E. Tanks.

Tank installation shall conform to the following requirements.

1. All tanks shall be installed on a level, stable base that will not settle.

2. The hole to receive the tank shall be large enough to permit the proper placement of the tank and backfill.

3. Where ground water, rock or other undesirable protruding obstructions are encountered, the bottom of the hole shall be excavated an additional 6 inches, and backfilled with sand, crushed stone, or gravel to the proper grade.

4. Backfill around and over the septic tank shall be placed in such a manner as to prevent undue strain or damage to the tank or connected pipes.

F. Absorption Systems.

1. Cover shall be evenly graded over the entire absorption area.

2. Distribution and Drop Boxes.

a. The inlet and outlet piping shall be sealed watertight to the sidewalls of the box.

b. The box shall be provided with a means of access. Access shall be brought to final grade.

c. The lid of the riser shall be adequate to prevent entrance of water, dirt or other foreign material, but made removable for observation and maintenance of the system.

d. The top of the box shall be at least 6 inches below final grade.

e. The box shall be installed on a level, stable base to ensure against tilting or settling, and to minimize movement from frost action.

f. Unused knock-out holes in boxes shall be sealed watertight.

3. The solid and distribution pipes shall be bedded true to line and grade, uniformly and continuously supported by firm, stable material.

4. No cracked, weakened, modified or otherwise damaged chamber or bundled synthetic aggregate units shall be used in any installation.

G. Pressure Distribution.

1. Installation practices shall follow the approved design.

G. Alternative Systems.

1. At-Grade and Mound Systems.

a. The site shall be cleared of surface vegetation, without removing soil, and scarified to an approximate depth of 6 inches. Any furrows resulting from the scarification shall be perpendicular to any slope on the site.

i. Rotary tilling is prohibited for scarification.

b. The system may not be installed in wet or moist soil conditions.

c. No equipment shall be driven over the scarified area.

d. The site shall be graded such that surface water drains away from the system and adjoining area.

2. Packed Bed Media and Sand Lined Trench Systems.

Installation practices shall follow the approved design.

R317-4-8. Final Inspections.

8.1. Final Inspections.

The regulatory authority shall inspect the entire installation before backfilling to determine compliance with this rule. Some components or system types require additional testing or inspection methods as outlined in the following.

A. Tank Water Tightness Testing.

Each tank shall be tested for water tightness prior to backfill.

1. The tanks shall be filled 24 hours before the inspection to allow stabilization of the water level. Considering water absorption by the concrete, there may not be a change in the water level nor any water moving visibly into or out of the tank. Testing shall be supervised by the regulatory authority. Tanks exhibiting obvious defects or leaks may not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

a. The regulatory authority may allow two piece tanks, with the joint below the water level, to be backfilled up to 3 inches below the joint to provide adequate support to the seam of the tank.

b. Polyethylene or fiber glass tanks may be backfilled as per manufacturers' recommendations.

2. If ground water elevations inhibit the ability to visibly inspect the exterior of the tank, the tanks may be tested by their ability to exclude water.

B. Distribution and Drop Boxes.

1. Distribution and drop boxes should be installed level and the flow distribution lines shall be checked by filling the boxes with water up to the outlets.

C. Pressure Distribution, Effluent Pumps.

1. Verify the correct operation of the pump, controls, and alarm.

D. Deep Wall Trenches, Seepage Pits.

1. Verify the depth of the trench excavation.

E. At Grade and Mound Systems.

1. Verify the preparation of the original ground before the placement of fill.

2. Verify that the final cover meets requirements.

E. Alternative and Experimental Systems.

1. All additional inspections will be dictated by the complexity of the system and absorption system type as identified by the regulatory authority.

G. Final Approval.

Final approval shall be issued by the regulatory authority prior to operation of the system, and shall include an as-built drawing of the completed system.

R317-4-9. Experimental Systems.

9.1. Administrative Requirements.

A. Where unusual conditions exist, experimental methods of onsite wastewater treatment and dispersal may be employed provided they are acceptable to the division and to the local health department having jurisdiction.

B. When considering proposals for experimental onsite wastewater systems, the division or the local health departments may not be restricted by this rule provided that:

1. the experimental system proposed is attempting to resolve an existing pollution or public health hazard, or when the experimental system proposal is for new construction, it has been predetermined that an acceptable back-up wastewater system will be installed in event of failure of the experiment;

2. the proposal for an experimental onsite wastewater system shall be in the name of and bear the signature of the person who will own the system; and

3. the person proposing to utilize an experimental system has the responsibility to maintain, correct, or replace the system in event of failure of the experiment.

C. When sufficient, successful experience is established with experimental onsite wastewater systems, the division may designate them as approved alternative onsite wastewater systems.

D. Following this approval of alternative onsite wastewater systems, the division may initiate rulemaking.

9.2 General Requirements.

A. All experimental systems shall be designed, installed and operated under the following conditions:

1. The ground water requirements shall be determined as described in Subsection R317-4-4.1.B.3.

2. The local health department shall advise the owner of the system of the experimental status of that type of system. The advisory shall contain information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements that are all specific to the type of system to be installed.

3. The local health department and the owner shall be provided with sufficient design, installation and operating information to produce a successful, properly operating installation.

4. The local health department is responsible for provision of, or oversight of an approved installation, inspection and maintenance and monitoring program for the systems. Such programs shall include approved procedures for complete periodic maintenance and monitoring of the systems.

5. The local health department may impose more stringent design, installation, operating and monitoring conditions than those required by the division.

6. All failures, repairs or alterations shall be reported to the local health department. All repairs or alterations shall be approved by the local health department.

B. When an experimental wastewater system exists on a property, notification of the existence of that system shall be recorded in the chain of title for that property.

R317-4-10. Wastewater Holding Tanks Administrative, Design, and Installation.

10.1. Administrative Requirements.

A. Requests for the use of wastewater holding tanks shall receive the written approval of the local health department prior to the installation of the holding tank and be administered under an annual operating permit.

B. Wastewater holding tanks are only permitted:

1. where an absorption system for an existing dwelling has failed and installation of a replacement absorption system is not practicable;

2. as a temporary, not to exceed one year, wastewater system for a new dwelling until a connection is made to an approved sewage collection system;

3. as a temporary, not to exceed one year, wastewater system that may include construction sites, labor camps, temporary mass gatherings, or emergency refuge sheltering; or

4. for other essential and unusual situations where both the division and the local health department having jurisdiction concur that the proposed holding tank will be designed, installed and maintained in a manner that provides long term protection of the waters of the state.

a. Requests for the use of wastewater holding tanks in this instance shall receive the written approval of both agencies prior to the installation of such devices.

C. Except on those lots recorded and approved for wastewater holding tanks prior to May 21, 1984, wastewater holding tanks are not permitted for use in new housing subdivisions, or commercial, institutional, and recreational developments except in those instances where these devices are part of a specific watershed protection program acceptable to the division and the local health department having jurisdiction.

10.2. General Requirements.

The design, site placement, installation, and maintenance of all wastewater holding tanks shall comply with the following:

A. No wastewater holding tank shall be installed and used unless plans and specifications covering its design and construction have been submitted to and approved by the appropriate regulatory authority.

B. A statement accompanying the application, that a contract with an approved pumper per Rule R317-550 will be obtained stating that the tank will be pumped out periodically at regular intervals or as needed, and contents will be disposed in an approved manner.

C. If authorization is necessary for disposal of wastewater at certain facilities, evidence of such authorization must be submitted for review.

10.3. Basic Plan Information Required.

Depending on the individual site and circumstances, or as determined by the regulatory authority, some or all of the following plan information may be required.

A. Applicant Information.

1. The name, current address, and telephone number of the applicant.

2. Complete address, legal description of the property, or both, to be served by this onsite wastewater system.

B. A plot or site plan showing:

1. direction of North;

2. daily wastewater flow;
3. location and liquid capacity of wastewater holding tank;
4. source and location of water supply;
5. location of water service line and building sewer; and
6. location of streams, ditches, watercourses, ponds, etc., near property.
C. Plan detail of wastewater holding tank and high wastewater level warning device.
D. Relative elevations of:
1. building floor drain;
2. building sewer;
3. invert of inlet for tank;
4. lowest plumbing fixture or drain in building served; and
5. the maximum liquid level of the tank.
E. Statement indicating the maximum anticipated ground water table.
10.4. Construction.
A. The tank shall be constructed of sound and durable material not subject to excessive corrosion and decay and designed to withstand hydrostatic and external loads. All wastewater holding tanks shall comply with the manufacturing materials and construction requirements specified for septic tanks.
B. Construction of the tank shall be such as to assure water tightness and to prevent the entrance of rainwater, surface drainage or ground water.
C. Tanks shall be provided with a maintenance access manhole at the ground surface or above and of at least 18 inches in diameter. Access covers shall have adequate handles and shall be designed and constructed in such a manner that they cannot pass through the access opening, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank.
D. A high water warning device shall be installed on each tank to indicate when it is within 75% of being full.
1. This device shall be either an audible or a visual alarm.
a. If the latter, it shall be conspicuously mounted.
2. All wiring and mechanical parts of such devices shall be corrosion resistant.
3. All conduit passage ways through the tank top or walls shall be water and vapor tight.
E. No overflow, vent, or other opening shall be provided in the tank other than those described above.
F. The regulatory authority may require that wastewater holding tanks be filled with water and allowed to stand overnight to check for leaks. Tanks exhibiting obvious defects or leaks may not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.
G. The building sewer shall comply with this rule.
H. Above ground holding tanks shall be clearly labeled as "Sewage".
10.5. Capacity.
The liquid capacity of the wastewater holding tank shall be based on wastewater flows for the type of dwelling or facility being served as identified in Section R317-4-13 Table 3 and on the desired time period between each pumping.
A. The minimum capacity of underground wastewater holding tanks shall be 1,000 gallons.
10.6. Location.
Any wastewater holding tank must be located:
A. in an area readily accessible to the pump truck in any type of weather that is likely to occur during the period of use;
B. in accordance with the requirements for septic tanks as specified in Section R317-4-13 Table 2; and
C. where it will not tend to float out of the ground due to a high ground water table or a saturated soil condition, since it will be empty or only partially full most of the time. In areas where the ground water table may be high enough to float the tank out of the ground when empty or partially full, adequate ground anchoring procedures shall be provided.
10.7. Management.
A. Wastewater holding tanks shall be pumped periodically, at regular intervals or as needed, and the wastewater contents shall be disposed of in a manner and at a facility meeting the approval of the appropriate regulatory authority.
B. Wastewater holding tanks for seasonal dwellings should be pumped out before each winter season to prevent freezing and possible rupture of the tank.
C. A record of the liquid waste hauler, pumping dates, and amounts pumped shall be maintained and made available to the appropriate regulatory authorities upon request.
D. Wastewater holding tanks shall be checked at frequent intervals by the owner or occupant and if leakage is detected it shall be immediately reported to the regulatory authority.
E. Repairs or replacements shall be conducted under the direction of the regulatory authority.
F. Improper location, construction, operation, or maintenance of a particular holding tank may result in appropriate legal action against the owner by the regulatory authority having jurisdiction.
G. Each holding tank installed under this rule, shall be inspected upon renewal of the operating permit.

R317-4-11. Operation and Maintenance of Systems.
11.1. Purpose.
The purpose of this section is to diminish the possibility of onsite wastewater system failures by informing the owners of required periodic maintenance, servicing, and monitoring. More complex systems will require a higher level of operation and maintenance.
11.2. Conventional Systems.
All conventional systems should be assessed after the first year of operation, and thereafter at the following minimum frequency.
A. Systems with daily flows between 1 and 3,000 gallons: every three years.
B. Systems with daily flows between 3,001 and 5,000 gallons: every two years.
C. Systems with non-domestic wastewater flows: yearly.
11.3. Pressure Distribution.
A. Each system utilizing pressure distribution shall be inspected as outlined in Section R317-4-13 Tables 7.1 and 7.2.
11.4. Alternative Systems.
A. Each alternative system shall be inspected as outlined in Section R317-4-13 Tables 7.1 and 7.2.

B. Each packed bed media system shall be sampled a minimum of every six months as outlined in Section R317-4-13 Table 7.3.

1. The grab sample shall be taken before discharge to an absorption system.

2. Effluent not meeting the standards of Section R317-4-13 Table 7.3 shall be followed with two successive weekly tests of the same type within a 30-day period from the first exceedance.

3. If two successive samples exceed the minimum standards, the system shall be deemed to be malfunctioning, and shall require further evaluation and a corrective action plan, see Subsection R317-4-3.11.

a. Effluent quality testing shall continue every two weeks until three successive samples are found to be in compliance.

11.4. Tank Servicing.

For recommended tank servicing see Section R317-4-14 Appendix E.

11.5. Distribution and Drop Box Maintenance.

Distribution and drop boxes, if provided, should be inspected and cleaned periodically.

11.6. Repair of a Malfunctioning System.

If corrective action is required see Subsection R317-4-3.11.

R317-4-12. Variance to Design Requirements.

12.1. Reasons for a Variance.

An applicant may request a variance from requirements of this rule only when a property has been deemed not feasible for the design or construction of an onsite wastewater system. A variance may not be granted for separation distances from public culinary water sources.

12.2. Conditions for a Variance.

A variance will not be approved unless the applicant demonstrates that all of the following conditions are met:

A. An onsite wastewater system consistent with this rule and local health department requirements cannot be constructed and a connection to a public or community-based sewerage system is not available or practicable. This determination will be made by the local health department.

B. Wastewater from the proposed onsite wastewater system will not:

1. contaminate ground water or surface water; and

2. surface or move off site before it is adequately treated to protect public health and the environment.

C. The proposed system will result in equal or greater protection of public health and the environment than is required by meeting the minimum standards and intent of this rule.

D. Adjacent properties, including the current and reasonably anticipated uses of adjacent properties, will not be jeopardized if the proposed system is constructed, operated, and maintained.

12.3. Procedure for Requesting a Variance.

A. A variance request shall include the information and documentation described in Subsection R317-4-12.5.

B. The local health department shall review the variance request and prepare a written determination outlining the conditions of approval or denial of the request. The review shall identify the factors considered in the process and specify the basis for the determination.

12.4. Variance Approvals.

A. A variance will not be approved unless the applicant demonstrates that all of the conditions in Subsection R317-4-12.2 are met.

B. A local health department may not issue an approval or an operating permit for an onsite wastewater system that does not comply with this rule unless a variance has been approved.

C. Notice of the conditions shall be recorded in the chain of title for the property in the office of the county recorder. The notice shall include:

1. the description of the system and variance conditions;

2. operation and maintenance requirements;

3. permission for the regulatory authority to access the property for the purpose of inspection and monitoring of the system; and

4. owner responsibilities to correct, repair, or replace the system at the direction of the regulatory agency.

12.5. Application Requirements.

The variance application shall include all information and documentation necessary to ensure that the standards in Subsection R317-4-12.2 will be met.

A. As appropriate, the information required under this section shall be submitted in a report by a professional engineer or a professional geologist that is certified at the appropriate level to perform onsite wastewater system design. An engineer or geologist who submits a report shall be licensed to practice in Utah and shall have sufficient experience and expertise to make the determinations in the report. Any such report shall include the engineer's or geologist's name and registration number, and a summary of qualifications. The report shall be imprinted with the engineer's or geologist's registration seal and signature. Information shall include at least the following.

1. Information demonstrating that connection to a public or community-based sewerage system is not available or practicable.

2. Technical justification and appropriate engineering, geotechnical, hydrogeologic, and reliability information justifying the request for a variance and how the conditions in 12.2 will be met.

3. A detailed description of the proposed system, including a detailed explanation of wastewater treatment technologies allowed by this rule that have been considered for use, and that will provide the best available treatment.

4. A statement of alternatives considered in lieu of a variance.

5. An operation, maintenance, and troubleshooting plan to keep the installed system operating as described in the application.

6. Documentation provided by the local health department that the adjoining land owners have been notified and provided opportunity for comment on the proposed variance.

R317-4-13. Tables.

TABLE 1.1

Minimum Lot Size (a) by Soil Type and Culinary Water Source

Soil Type	Public Water Supply	Non-public Water Supply (b)
1	12,000 sq. ft.	1 Acre
2	15,000 sq. ft.	1.25 Acres
3	18,000 sq. ft.	1.5 Acres
4	20,000 sq. ft.	1.75 Acres
5 (c)	20,000 sq. ft. (c)	1.75 Acres (c)

TABLE 1.2

Soil Type Key (d)

Soil Type	Soil Texture (e)	Soil Structure	Percolation Rate (minutes per inch)
1	Coarse Sand, Sand, Loamy Coarse Sand, Loamy Sand	Single Grain	1-10
2	Fine Sand, Very Fine Sand, Loamy Fine Sand, Loamy Very Fine Sand	Single Grain	11-20
3	Coarse Sandy Loam, Sandy Loam	Prismatic, Blocky, Granular	21-40
4	Coarse Sandy Loam, Sandy Loam	Massive, Platy	41-60
	Fine Sandy Loam, Very Fine Sandy Loam, Loam, Silt Loam	Prismatic, Blocky, Granular	
5	Fine Sandy Loam, Very Fine Sandy Loam, Loam, Silt Loam,	Massive, Platy	61-120
	Sandy Clay Loam, Clay Loam, Silty Clay Loam	Massive	
	Sandy Clay Loam, Clay Loam, Silty Clay Loam, Sandy Clay, Clay, Silty Clay, Silt	Prismatic, Blocky, Granular	
6 (f)	Sandy Clay Loam, Clay Loam, Silty Clay Loam	Platy	>120
	Sandy Clay, Clay, Silty Clay, Silt	Massive, Platy	

NOTES

(a) Excluding public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building lot for a single-family dwelling. These minimum lot size requirements do not apply to building lots that have received final local health department approval prior to the adoption of this rule.

Lots that are part of subdivisions that have received final local health department approval prior to the adoption of this rule are only exempt from the minimum lot size requirements if the developer has and is proceeding with reasonable diligence. Notwithstanding this grandfather provision for approved lots, the minimum lot size requirements are applicable if compelling or countervailing public health interests would necessitate application of these more stringent requirements. The shape of the lot shall also be acceptable to the regulatory authority.

(b) See the separation requirements in Section R317-4-13 Table 2.

(c) Packed bed media systems are required for this soil type.

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

(e) See the USDA soil classification system for a more detailed description.

(f) These soils are unsuitable for any absorption system.

TABLE 2

Minimum Separation Distances in Feet (a)

Item Requiring Setback	From Building Sewers and Effluent Sewers	From Septic, Pump, and Other Tanks	From Absorption Area and Replacement Area
Absorption and Replacement Areas		5	(b)
Public Culinary Water Sources	(c)	100 (c)	100 (c)
Individual or Non-public Culinary Water Sources (d)	25	50	100 (e)
Culinary Water Supply Line	(f)	10 (f)	10 (f)
Non-culinary Well or Spring	10	25	100
Lake, Pond, Reservoir (a)	10	25	100
Watercourse (live or ephemeral stream, river, subsurface drain, canal, storm water drainage systems, etc.)		25	100 (g)
Building Foundation			
Without foundation drain		5	5 (h)
With foundation drain		10	100 (i)
Curtain drains	10	10	100 (i)
Dry washes, gulches, and gullies		25	50
Swimming pool, below ground	3	10	25
Dry wells, catch basins		5	25

Down slopes that exceed 35%. This includes all natural slopes or escarpments and any manmade cuts, retaining walls, or embankments.	10	50	(j)
Property line	5	5	5

NOTES

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

(b) See Subsection R317-4-6.14 for setback requirements.

(c) All distances shall be consistent with Rule R309-600.

(d) Compliance with separation requirements does not guarantee acceptable water quality in every instance. Where geological or other conditions warrant, greater distances may be required by the regulatory authority.

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

(f) If the water supply line is for a public water supply, the separation distance shall comply with the requirements of Rule R309-550. No culinary water service line shall pass through any portion of an absorption area.

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

(h) Horizontal setback between a deep wall trench or seepage pit and a foundation of any building is at least 20 feet.

(i) The regulatory authority may reduce the separation distance, if it can be shown that the effluent will not enter the drain, but each case must be decided on its own merits by the regulatory authority. In no case shall the regulatory authority grant approval for an absorption area to be closer than 20 feet.

(j) This setback may be reduced if a reference line originating at the bottom of the distribution pipe, sloped at 35% below horizontal, will not daylight or intersect the ground surface.

TABLE 3

Estimated Flow Rates of Wastewater (a)

Type of Establishment	Gallons per Day
Airports	
a. per passenger	3
b. per employee	15
Boarding and Rooming Houses	
a. for each resident boarder and employee	50 per person
b. additional for each nonresident boarder	10 per person
Bowling Alleys, not including food service	85 per alley
Camps	
a. developed with flush toilets and showers	30 per person
b. developed with flush toilets	20 per person
c. developed with no flush toilets	5 per person
Churches, per person	5
Condominiums, Multiple Family Dwellings, or Apartments	150 per bedroom
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds	1 per person
Fire Stations	
a. with full-time employees and food preparation	70 per person
b. with no full-time employees and no food preparation	5 per person
Food Service Establishment (b)	
a. ordinary restaurants, not 24 hour service	35 per seat
b. 24 hour service	50 per seat
c. single service customer utensils only	2 per customer
d. or, per customer served, includes toilet and Kitchen wastes	10
Gyms	
a. participant and staff member	25 per person
b. spectator	4 per person
Hairdresser, per chair	65
Highway Rest Stops, improved with restroom facilities	5 per vehicle
Hospitals	250 per bed space
Hotels, Motels, and Resorts	125 per unit
Industrial Buildings, exclusive of industrial waste	
a. with showers, per 8 hour shift	35 per person
b. with no showers, per 8 hour shift	15 per person
Labor or Construction Camps	50 per person
Launderette	580 per washer
Mobile Home Parks	400 per unit
Movie Theaters	
a. auditorium	5 per seat
b. drive-in	10 per car space
Nursing Homes	200 per bed space

Office Buildings and Business Establishments, not including food service, per eight hour shift	15 per employee
Picnic Parks, toilet wastes only	5 per person
Recreational Vehicle Parks	
a. temporary or transient with no sewer connections	50 per space
b. temporary or transient with sewer connections	125 per space
Recreational Vehicle Dump Station, per self-contained vehicle	50
Schools	
a. boarding	75 per person
b. day, without cafeteria, gymnasiums or showers	15 per person
c. day, with cafeteria, but no gymnasiums and showers	20 per person
d. day, with cafeteria, gymnasium and showers	25 per person
Service Stations, per day, per pump	250
Skating Rink, Dance Halls, Ski Areas, etc.	10 per person
Stores, including Convenience Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses, Using Maximum Bather Load	10 per person
Taverns, Bars, Cocktail lounges with No Food Service	20 per seat
Visitor Centers	5 per visitor

NOTES
(a) When more than one use will occur, the multiple use shall be considered in determining total flow. Small industrial plants maintaining a cafeteria or showers and club houses or motels maintaining swimming pools or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established flows from known or similar installations.
(b) No commercial food waste disposal unit shall be connected to an onsite wastewater system unless first approved by the regulatory authority.

TABLE 4

Minimum Standards for Building Sewer, Effluent Sewer, and Distribution Pipe Materials (a)

Acceptable Building Sewer and Effluent Sewer Materials

Type of Pipe	Minimum Standard
Acrylonitrile-Butadiene Styrene (ABS) Schedule 40	ASTM (b) D-2680 (c), D-2751, F-628
Polyvinyl Chloride (PVC) Schedule 40	ASTM D-2665, D-3033, D-3034

Acceptable Distribution Pipe Materials

Type of Pipe	Minimum Standard
ABS Schedule 40	ASTM D-2661, D-2751
Polyethylene (PE), Smooth Wall	ASTM D-3350
PVC Schedule 40	ASTM D-2665, D-3033, D-3034
PVC	ASTM D-2729 (d)

NOTES
(a) Each length of building sewer, effluent sewer, and distribution pipe shall be stamped or marked.
(b) American Society for Testing and Materials.
(c) For domestic wastewater only, free from industrial wastes.
(d) Although perforated PVC, ASTM D-2729 is approved for absorption system application, the solid-wall version of this pipe is not approved for any application.

TABLE 5

Minimum Hydraulic Loading Rates for Percolation Testing

Percolation Rate (Minutes per Inch)	Absorption Systems Hydraulic Loading Rates (a) (gal/day/ft2) (c)(d)(e)	Absorption Beds and Mound Systems Hydraulic Loading Rates (b) (gal/day/ft2) (c)(d)(f)
0-10 (g)	0.90	0.45
11-20	0.70	0.35
21-30	0.60	0.3
31-40	0.55	0.27
41-50	0.50	0.25 (h)
51-60	0.45	0.22 (h)
61-90 (i)	0.40	(j)
91-120 (i)	0.35	(j)

NOTES
(a) The following formula may be used in place of the values in this table: q=2.35 divided by the square root of the percolation rate and then add 0.15 where q is the hydraulic loading rate. For percolation rates faster than 1 minute per inch, 1 minute per inch shall be used in the formula.
(b) The following formula may be used in place of the values in this table: q=1.2 divided by the square root of the percolation rate and then add 0.08 where q is the hydraulic loading rate. For percolation rates faster than 1 minute per inch, 1 minute per inch shall be used in the formula.
(c) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day shown in Section R317-4-13 Table 3, divided by the hydraulic loading rate within the applicable percolation rate category.
(d) For non-residential facilities, if a garbage grinder is not used, the absorption area may be reduced by 10% (0.9 multiplier). If any automatic sequence washer is not used, the absorption area may be reduced by 30% (0.7 multiplier). If both of these appliances are not used, the absorption area may be reduced by 40% (0.6 multiplier).
(e) For non-residential facilities, a minimum of 150 square feet of trench bottom or sidewall absorption area shall be provided.
(f) For non-residential facilities, a minimum of 300 square feet of absorption area shall be provided.
(g) Soils with a percolation rate faster than 1 minute per inch are only acceptable with the use of an alternative packed bed media system with a disinfection unit.
(h) Not suitable for absorption beds.
(i) Acceptable for alternative packed bed media systems only.
(j) Not suitable for absorption beds or mounds.

TABLE 6

Minimum Hydraulic Loading Rates for Soil Classification

Texture	Structure	Absorption Systems Hydraulic Loading Rate (gal/ft2/day) (a)(b)(c)	Absorption Beds and Mound Systems Hydraulic Loading Rate (gal/ft2/day) (a)(b)(d)
Coarse sand, sand, loamy coarse sand, loamy sand	Single grain	0.9 (e)	0.45 (e
Fine sand, very fine sand, loamy fine sand, loamy very fine sand	Single grain	0.7	0.35
Coarse sandy loam, sandy loam	Massive	0.45	0.22 (f)
	Platy	0.5	0.25 (f)
	Prismatic, blocky, granular	0.65	0.32
Fine sandy loam, very fine sandy loam	Massive	0.4	(g)
	Platy	0.35	(g)
	Prismatic, blocky, granular	0.5	0.25 (f)
Loam	Massive	0.4	(g)
	Platy	(e)	(g)
	Prismatic, blocky, granular	0.5	0.25 (f)
Silt loam	Massive	(e)	(g)
	Platy	(e)	(g)
	Prismatic, blocky, granular	0.45	0.22 (f)
Sandy clay loam, clay loam, silty clay loam	Massive	(e)(h)	(g)
	Platy	(i)	(i)
	Prismatic, blocky, granular	0.4 (e)(h)	(g)
Silt, silty clay, sandy clay, clay	Massive	(i)	(i)
	Platy	(i)	(i)
	Prismatic, blocky, granular	0.35 (e)(h)	(g)

NOTES
(a) Minimum absorption area is equal to the actual or estimated wastewater flow in gallons per day, using Section R317-4-13 Table 3, divided by the hydraulic loading rate within the applicable soil texture and structure category.
(b) For non-residential facilities, if a garbage grinder is not used, the absorption area may be reduced by 10% (0.9 multiplier). If any automatic sequence washer is not used, the absorption area may be reduced by 30% (0.7 multiplier). If both of these appliances are not used, the absorption area may be reduced by 40% (0.6 multiplier).
(c) For non-residential facilities, a minimum of 150 square feet of trench bottom or sidewall absorption area shall be provided.
(d) For non-residential facilities, a minimum of 300 square feet of absorption area shall be provided.
(e) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse grained porous soils, and the percentage of sand and structure in fine grained soils. Percolation testing shall be used for further evaluation.
(f) Not suitable for absorption beds.
(g) Not suitable for absorption beds or mounds.
(h) These soils may be permissible for packed bed media absorption systems only.
(i) These soils are unsuitable for any absorption system.

TABLE 7: Minimum Inspection Frequency, Components, and Effluent Sampling Parameters

TABLE 7.1

Minimum Inspection Frequency (a)

Type of System	Annual	Semi-annual
Pressure Distribution	X	
At-Grade (first 5 years only)	X	
Mound	X	
Packed Bed Media		X
Sand Lined Trench	X	
Holding Tank	X	
Experimental System		X

NOTES (a) Or more frequently as directed by the regulatory authority.

TABLE 7.2

Components (a)

Type of System	Septic Tank and Other Tanks	Distribution or Drop Boxes (if accessible)	Pumps, Float Settings, Control Panel	Pressure Laterals, Absorption Area	Disinfection Unit (c)
Pressure Distribution	X		X	X	
At-Grade	X	X	X	X	
Mound	X		X	X	
Packed Bed Media	X	X	X	X	X
Sand Lined Trench	X		X	X	
Holding Tank (b)	X		X		
Experimental	X	X	X	X	

NOTES
(a) Inspect other components as directed by the regulatory authority.
(b) Including pumping records.
(c) Required for absorption systems installed in excessively permeable soils, or as directed by the regulatory authority.

TABLE 7.3

Effluent Sampling Parameters
Packed Bed Media System Routine Sampling Parameters
Must sample Turbidity, or BOD5 and TSS.

Field Testing	Laboratory Testing			
Turbidity	BOD5	TSS	COD (a)	E. coli
≤20 NTUs	≤25 mg/l	≤25 mg/l	≤75 mg/l	<126/100 ml (b)

NOTES
(a) Chemical oxygen demand (COD) may be used in place of BOD5.
(b) E. coli testing required when a disinfection unit is installed.

R317-4-14. Appendices.

Appendix A. Septic Tank Construction.

1.1. Plans for Tanks Required.

Plans for all septic tanks and underground holding tanks shall be submitted to the division for approval. Such plans shall show all dimensions, capacities, reinforcing, maximum depth of soil cover, and such other pertinent data as may be required. All tanks shall conform to the design drawing and shall be constructed under strict, controlled supervision by the manufacturer.

A. Precast Reinforced Concrete Tanks.

1. The walls and base of precast tanks shall be securely bonded together and the walls shall be of monolithic or keyed construction.

2. The sidewalls and bottom of such tanks shall be at least 3 inches in thickness.

3. The top shall have a minimum thickness of 4 inches.

4. Such tanks shall have reinforcing of at least 6 inch x 6 inch No. 6, welded wire fabric, or equivalent. Exceptions to this reinforcing requirement may be considered by the division based on an evaluation of acceptable structural engineering data submitted by the manufacturer.

5. All concrete used in precast tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodded to minimize honeycombing and to assure water tightness.

6. Precast sections shall be set evenly in a full bed of sealant. If grout is used it shall consist of two parts plaster sand to one part cement with sufficient water added to make the grout flow under its own weight.

7. Excessively mortared joints should be trimmed flush.

8. The inside and outside of each mortar joint shall be sealed with a waterproof bituminous sealing compound.

9. For the purpose of early reuse of forms, the concrete may be steam cured. Other curing by means of water spraying or a membrane curing compound may be used and shall comply to best acceptable methods as outlined in Guide to Curing Concrete, ACI308R-01, by American Concrete Institute, Farmington Hills, Michigan.

B. Poured-In-Place Concrete Septic Tanks.

1. The top of poured-in-place septic tanks with a liquid capacity of 1,000 to 1,250 gallons shall be a minimum of 4 inches thick, and reinforced with 3/8 inch reinforcing rods 12 inches on center both ways, or equivalent.

2. The top of tanks with a liquid capacity of greater than 1,250 gallons shall be a minimum of 6 inches thick, and reinforced with 3/8 inch reinforcing rods 8 inches on center both ways, or equivalent.

3. The walls and floor shall be a minimum of 6 inches thick. The walls shall be reinforced with 3/8 inch reinforcing rods 8 inches on center both ways, or equivalent. Inspections by the regulatory authority may be required of the tank reinforcing steel before any concrete is poured.

4. A 6 inch water stop shall be used at the wall-floor juncture to ensure water tightness.

5. All concrete used in poured-in-place tanks shall be Class A, at least 4,000 pounds per square inch, and shall be vibrated or well-rodded to minimize honeycombing and to ensure water tightness.

6. Curing of concrete shall comply with the requirements in Subsection R317-4-14 Appendix A.1.2.

C. Fiberglass Tanks.

1. Fiberglass tanks shall comply with one of the following criteria for acceptance.

a. The Interim Guide Criteria for Glass-Fiber-Reinforced Polyester Septic Tanks, International Association of Plumbing and Mechanical Officials Z1000-2007. The identifying seal of the International Association of Plumbing and Mechanical Officials shall be permanently embossed in the fiberglass as evidence of compliance.

b. Manufactured to meet the structural requirements of Underwriters Laboratories (UL) Standard 1316.

c. Professionally engineered plans demonstrating compliance to tank configuration requirements of this rule including acceptable structural calculations or other pertinent data as may be required.

2. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the division.

3. The tank shall be installed in accordance with the manufacturer's recommendations.

D. Polyethylene Tanks.

1. Polyethylene tanks shall comply with the criteria for acceptance established in Prefabricated Septic Tanks and Wastewater Holding Tanks, Can3-B66-10 by the Canadian Standards Association, Ontario, Canada.

2. Inlet and outlet tees shall be attached to the tank by a rubber or synthetic rubber ring seal and compression plate, or in some other manner approved by the division.

3. The tank shall be installed in accordance with the manufacturer's recommendations.

1.2. Identifying Marks.

A. All prefabricated or precast tanks that are commercially manufactured shall be plainly, legibly, and permanently marked or stamped with:

1. the manufacturer's name and address, or nationally registered trademark;

2. the liquid capacity of the tank in gallons on the exterior at the outlet end within 6 inches of the top of the wall; and

3. the inlet and outlet of all such tanks shall be plainly marked as "IN" or "OUT" respectively.

1.3. Inlets and Outlets.

Inlets and outlets of tanks or compartments thereof shall meet the minimum diameter requirements for building sewers.

A. Only one inlet or outlet is allowed, unless preauthorized by the regulatory authority.

B. Inlets and outlets shall be located on opposite ends of the tank.

1. The invert of flow line of the inlet shall be located at least 2 inches, above the invert of the outlet to allow for momentary rise in liquid level during discharge to the tank.

2. Approved tanks with offset inlets may be used when approved by the regulatory authority.

C. All inlets and outlets shall have a baffle or sanitary tee.

1. An inlet baffle or sanitary tee of wide sweep design shall be provided to divert the incoming wastewater downward. This baffle or tee is to penetrate at least 6 inches below the liquid level, but the penetration is not to be greater than that allowed for the outlet device.

2. For tanks with vertical sides, outlet baffles or sanitary tees shall extend below the liquid surface a distance equal to approximately 40% of the liquid depth. For horizontal cylindrical tanks and tanks of other shapes, that distance shall be reduced to approximately 35% of the liquid depth.

3. All baffles shall be constructed from sidewall to sidewall or shall be designed as a conduit.

4. All sanitary tees shall be permanently fastened in a vertical, rigid position.

D. Inlet and outlet pipe connections to the septic tank shall be sealed and adhere to the tank and pipes to form watertight connections with a bonding compound or sealing rings.

E. Inlet and outlet devices may not include any design features preventing free venting of gases generated in the tank or absorption system back through the roof vent in the building plumbing system. The top of the baffles or sanitary tees shall extend at least 6 inches above the liquid level in order to provide scum storage, but no closer than 1 inch to the inside top of the tank.

1.4. Liquid Depth of Tanks.

Liquid depth of tanks shall be at least 30 inches. Depth in excess of 72 inches may only be considered in calculating liquid volume required in Subsection R317-4-6.6 if the tank length is at least two times the liquid depth.

1.5. Burial Depth.

The maximum burial depth shall be stated on the plans submitted.

1.6. Tank Compartments.

Septic tanks may be divided into compartments provided they meet the following:

A. The volume of the first compartment shall equal or exceed two-thirds of the total required septic tank volume;

B. No compartment shall have an inside horizontal dimension less than 24 inches;

C. Inlets and outlets shall be designed as specified for tanks, except that when a partition wall is used to form a multi-compartment tank, an opening in the partition may serve for flow between compartments provided the minimum dimension of the opening is 4 inches, the cross-sectional area is not less than that of a 6 inch diameter pipe (28.3 square inches), and the mid-point is below the liquid surface a distance approximately equal to 40% of the liquid depth of the tank.

1.7. Scum Storage.

Scum storage volume shall consist of 15% or more of the required liquid capacity of the tank and shall be provided in the space between the liquid surface and the top of inlet and outlet devices.

1.8. Access to Tank Interior.

Adequate access to the tank shall be provided to facilitate inspection, servicing and maintenance, and shall have no structure or other obstruction placed over it and shall conform to the following requirements:

A. Access to each compartment of the tank shall be provided through properly placed manhole openings not less than 18 inches in diameter, in minimum horizontal dimension or by means of an easily removable lid section.

B. All access covers shall be designed and constructed in such a manner that they cannot pass through the access openings, and when closed will be child-proof and prevent entrance of surface water, dirt, or other foreign material, and seal the odorous gases in the tank. Concrete access covers for manhole openings shall have adequate handles.

C. Access to inlet and outlet devices shall be provided through properly spaced openings not less than 12 inches in minimum horizontal dimension or by means of an easily removable lid section.

Appendix B. Pressure Distribution, Pumps, Controls, and Alarms.

1.1. Design.

The design shall generally be based on the Utah Guidance for Performance, Application, Design, Operation & Maintenance: Pressure Distribution Systems document with the following exceptions:

A. Design and equipment shall emphasize ease of maintenance, longevity, and reliability of components and shall be proven suitable by operational experience, test, or analysis, acceptable to the regulatory authority.

B. Electrical disconnects shall be provided that are appropriate for the installation and shall have gas-tight junction boxes or splices. Electrical components used in onsite wastewater systems shall comply with applicable requirements of the State of Utah Electrical Code.

C. All components shall be constructed and installed to facilitate ease of service without having to alter any other part.

1.2. Pumps, Controls, and Alarms.

Prior to final approval for operation, all pumps, controls and related apparatus shall be field tested and found to operate as designed.

A. When duplex pump system is designed, controls shall be provided that an alarm will signal when one of the pumps malfunctions.

B. Where multiple pumps are operated in series, controls shall be installed to prevent the operation of a pump or pumps preceding a station that experiences a high level alarm event.

C. Controls shall be capable of controlling all functions incorporated or required in the design of the system.

1. The control panel for all pressure distribution systems shall include a pump run-time hour meter and a pump event counter or other acceptable flow measurement method.

2. The control panel shall be installed within sight of the access risers.

a. Other locations may be approved by the regulatory authority.

3. Supporting hydraulic calculations and pump curve analysis shall be submitted to the regulatory authority with the design.

Appendix C. Soil Exploration Pits, Soil Logs, Soil Evaluations.

1.1. Soil Exploration Pit Construction.

Soil conditions shall be obtained from soil exploration pit(s) dug to a depth of 10 feet in the absorption area, or to the ground water table if it is shallower than 10 feet below ground surface. In the event that absorption system excavations will be deeper than 6 feet, soil exploration pits shall extend to a depth of at least 4 feet below the bottom of the proposed absorption system excavation.

A. Soil exploration pits shall be constructed in a manner to reduce potential for physical injury. One end of each pit should be sloped gently or "stair-stepped" to permit easy entry if necessary.

1.2. Soil Logs.

A. The soil log shall contain the following information.

1. A signed statement certifying that the logs were evaluated and recorded in accordance with this rule.

2. The names of all qualified individuals per Rule R317-11 conducting the tests.

3. The location of the property.

4. The location of the soil exploration pit on the property.

5. The date of the log.

6. A description and depths of the soil horizons throughout the soil exploration pit to include:

a. soil texture and structure using the USDA system of classification;

b. estimated volume percentage of coarse fragments defined as:

i. "Gravel" means a rock fragment from 0.1 inches to 3 inches in diameter;

ii. "Cobble" means rock fragment from 3 inches to 10 inches in diameter;

iii. "Stone" means a rock fragment greater than 10 inches in diameter;

c. the presence and abundance of mottling defined as:

i. "Few" when less than 2% of the exposed surface is occupied by mottles;

ii. "Common" when from 2% to 20% of the exposed surface is occupied by mottles; and

iii. "Many" when more than 20% of the exposed surface is occupied by mottles;

d. depth to groundwater or bedrock, if encountered, and maximum anticipated groundwater table; and

e. other pertinent information.

1.3. Soil Evaluation.

Soils shall be evaluated using the USDA Soil Texture Classification method.

A. The soil horizon with the lowest loading rate shall be used in calculating the required absorption area.

Appendix D. Percolation Method.

1.1. Percolation Test Requirements.

Percolation tests shall be completed by an individual certified per Rule R317-11 and shall be conducted in accordance with the instructions in this appendix.

A. Typical Areas.

When percolation tests are conducted, such tests shall be conducted at points and elevations selected as typical of the area in which the absorption system will be located.

B. Percolation Test Certificate.

Percolation test results shall be submitted on a signed "Percolation Test Certificate". The test certificate shall contain the following:

1. A signed statement certifying that the tests were conducted in accordance with this rule.

2. The names of all individuals per Rule R317-11 conducting the tests.

3. The location of the property.

4. The location of the percolation tests on the property.

5. The depth to the bottom of the percolation test hole from the existing grade.

6. The final stabilized percolation rate of each test in minutes per inch.

7. The date of the tests.

8. Other pertinent information.

C. Specific Requirements.

Percolation tests shall be conducted at the owner's expense and in accordance with the following:

1. Conditions Prohibited for Test Holes.

Percolation tests may not be conducted in test holes that extend into ground water, bedrock, or frozen ground. Where shrink-swell clays, fissured soil formations, or saprolite is encountered, tests shall be made under the direction of the regulatory authority.

2. Soil Exploration Pit Prerequisite to Percolation Tests.

Since the appropriate percolation test depth depends on the soil conditions at a specific site, the percolation test shall be conducted only after the soil exploration pit has been dug and examined for suitable and porous strata and ground water table information. Percolation test results should be related to the soil conditions found.

3. Test Holes to Commence in Specially Prepared Excavations.

All percolation test holes should commence in specially prepared larger excavations, preferably made with a backhoe, of sufficient size that extend to a depth approximately 6 inches above the strata to be tested.

4. Type, Depth, and Dimensions of Test Holes.

Test holes shall be dug or bored, preferably with hand tools such as shovels or augers, etc., and shall have horizontal dimensions ranging from 4 to 18 inches, preferably 8 to 12 inches. The vertical sides shall be at least 12 inches deep, terminating in the soil at an elevation 6 inches below the bottom of the proposed onsite wastewater system. In testing individual soil strata for deep wall trenches and seepage pits, the percolation test hole shall be located entirely within the strata to be tested, if possible.

5. Preparation of Percolation Test Hole.

Carefully remove any smeared soil surfaces to provide an open, natural soil interface into that water may percolate. Remove all loose soil from the bottom of the hole. Add 2 to 3 inches of clean pea gravel to protect the bottom from scouring or sealing with sediment when water is added. Caving or sloughing in some test holes can be prevented by placing in the test hole a wire cylinder or perforated pipe surrounded by clean pea gravel.

6. Saturation and Swelling of the Soil.

It is important to distinguish between saturation and swelling. Saturation means that the void spaces between soil particles are full of water. This can be accomplished in a relatively short period of time. Swelling is a soil volume increase caused by

intrusion of water into the individual soil particles. This is a slow process, especially in clay-type soil, and is the reason for requiring a prolonged swelling period.

7. Placing Water in Test Holes.

Water should be placed carefully into the test holes by means of a small diameter siphon hose or other suitable method to prevent washing down the side of the hole.

8. Percolation Rate Measurement, General.

Necessary equipment should consist of a tape measure with at least 1/16 inch calibration or float gauge, and a time piece or other suitable equipment. All measurements shall be made from a fixed reference point near the top of the test hole to the surface of the water.

9. Percolation Test Procedure.

The hole shall be carefully filled with clear water and a minimum depth of 12 inches shall be maintained above the gravel for at least a four hour period by refilling whenever necessary. Water remaining in the hole after four hours may not be removed. Immediately following the saturation period, the soil shall be allowed to swell not less than 16 hours or more than 30 hours. Immediately following the soil swelling period, the percolation rate measurements shall be made as follows:

a. Any soil that has sloughed into the hole shall be removed and water shall be adjusted to 6 inches over the gravel.

b. Thereupon, from the fixed reference point, the water level shall be measured and recorded at approximately 30 minute intervals for a period of four hours, unless two successive water level drops do not vary more than 1/16 of an inch and indicate that an approximate stabilized rate has been obtained.

i. If 6 inches of water seeps away in less than 15 minutes, a shorter time interval of 5 minutes between measurements may be used.

ii. If 6 inches of water seeps away in less than 30 minutes, a shorter time interval of 15 minutes between measurements may be used.

c. The hole shall be filled with 6 inches of clear water above the gravel after each time interval.

d. In no case shall the water depth exceed 6 inches above the gravel.

e. The final water level drop shall be used to calculate the percolation rate.

i. If no stabilized rate is achieved, the smallest drop shall be used to make this calculation.

f. Precautions shall be taken to prohibit water or soil from freezing during the test procedure.

10. Test Procedure for Type 1 and Type 2 Soils.

The hole shall be carefully filled with clear water to a minimum depth of 12 inches over the gravel and the time for this amount of water to seep away shall be determined. The procedure shall be repeated and if the water from the second filling of the hole at least 12 inches above the gravel seeps away in 10 minutes or less, the test may proceed immediately as follows:

a. Water shall be added to a point not more than 6 inches above the gravel.

b. Thereupon, from the fixed reference point, water levels shall be measured at 10 minute intervals for a period of one hour.

i. If 6 inches of water seeps away in less than 10 minutes, a shorter time interval of 5 minutes between measurements may be used.

c. The hole shall be filled with 6 inches of clear water above the gravel after each time interval.

d. In no case shall the water depth exceed 6 inches above the gravel.

e. The final water level drop shall be used to calculate the percolation rate.

i. If no stabilized rate is achieved, the smallest drop shall be used to make this calculation.

11. Calculation of Percolation Rate.

The percolation rate is equal to the time elapsed in minutes for the water column to drop, divided by the distance the water dropped in inches and fractions thereof.

12. Using Percolation Rate to Determine Absorption Area.

The minimum or slowest percolation rate shall be used in calculating the required absorption area.

Appendix E. Tank Operation and Maintenance.

1.1. Maintenance of Septic Tanks.

A. Septic tanks shall be emptied before too much sludge or scum is allowed to accumulate and seriously reduce the tank volume settling depth. If either the settled solids or floating scum layer accumulate too close to the bottom of the outlet baffle or bottom of the sanitary tee pipe in the tank, solid particles will overflow into the absorption system and eventually clog the soil and ruin its absorption capacity.

B. A septic tank that receives normal loading should be inspected as indicated in Section R317-4-11 to determine if it needs emptying. Although there are wide differences in the rate that sludge and scum accumulate in tanks, a septic tank for a private residence will generally require emptying every three to five years. Actual measurement of scum and sludge accumulation is the only sure way to determine when a tank needs to be emptied. Experience for a particular system may indicate the desirability of longer or shorter intervals between inspections.

C. The tank should be completely emptied if either the bottom of the floating scum mat is within 3 inches of the bottom of the outlet baffle or tee or the sludge level has built up to approximately 12 inches from the bottom of the outlet baffle or tee, or the scum and sludge layers together equal 40% or more of the tank volume. All scum and solids should be washed out and removed from the tank.

D. If multiple tanks or tanks with multiple compartments are provided, care should be taken to ensure that each tank or compartment is inspected and emptied.

E. Septic tank wastes contain disease causing organisms and shall be disposed of only in areas and in a manner that is acceptable to local health authorities and consistent with state rules.

F. Immediate replacement of damaged inlet or outlet fittings in the septic tank is essential for effective operation of the system.

G. Effluent screens or filters.

Remove the filter in a manner that prevents solids from passing to the absorption system. Wash the filter over the inlet side of septic tank. Replace the cleaned filter back into the outlet tee.

H. When the tank is empty, the interior surfaces of the tank should be inspected for leaks or cracks using a strong light.

I. A written record of all maintenance of the septic tank and absorption system should be kept by the owner of that system.

J. The functional operation of septic tanks is not improved by the addition of yeasts, disinfectants, additives or other chemicals; therefore, use of these materials is not recommended.

K. The advice of your regulatory authority should be sought before chemicals arising from a hobby or home industry or other unusual activities are discharged into a septic tank system.

L. Economy in the use of water helps prevent overloading of a septic tank system that could shorten its life and necessitate expensive repairs. The plumbing fixtures in the building should be checked regularly to repair any leaks that can add substantial amounts of water to the system. Industrial wastes and other liquids that may adversely affect the operation of the onsite wastewater system should not be discharged into such a system. Paper towels, facial tissue, disinfectant wipes, newspaper, wrapping paper, disposable diapers, sanitary napkins, coffee grounds, rags, sticks, and similar materials should also be excluded from the septic tank since they do not readily decompose and can lead to clogging of both the plumbing and the absorption system.

1.2. Maintenance of Other Tanks.

A. Other Tanks.

Any measurable amount of sludge or scum present in other tanks should be removed.

B. If a screen is present, it should be rinsed and cleaned over the opening of the septic tank.

KEY: waste water, onsite wastewater systems, alternative onsite wastewater systems, septic tanks
Date of Enactment or Last Substantive Amendment: [~~October 23, 2007~~|2013]
Notice of Continuation: February 10, 2010
Authorizing, Implemented or Interpreted Law: 19-5-104

Environmental Quality, Water Quality
R317-8
Utah Pollutant Discharge Elimination System (UPDES)

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 37581
FILED: 05/01/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendments are being made to bring the Utah Pollutant Discharge Elimination System (UPDES) rules into conformance with federal regulations pertaining to Concentrated Animal Feeding Operations (CAFOs). Additional changes are proposed to implement the provisions of S.B. 21, Department Of Environmental Boards Revisions (2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: As a result of changes to federal requirements pertaining to CAFOs in 40 CFR, a new Section, R317-8-10, is being added to the rule. Additional changes are being proposed to Sections R317-8-1, R317-8-2, R317-8-3, R317-8-4, and R317-8-6. The proposed amendments include: 1) changes to several water quality compliance requirements that CAFOs need to implement at their facilities; 2) changes to CAFO permitting requirements; and 3) changes to some of the administrative processes pertaining to CAFOs, such as a requirement to provide public notice of nutrient management plans. Most of the federal requirements are included by incorporating the applicable federal regulation by reference. Changes required to implement S.B. 21 consisted of numerous replacements of the term "Executive Secretary"with "Director".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 40 CFR 122 and 40 CFR Part 412 and Section 19-5-105 and Section 19-5-105.5 and Section 19-5-110

MATERIALS INCORPORATED BY REFERENCES:

- Updates Utah Natural Resource Conservation Service Practice Standard 590, published by Natural Resource Conservation Service, 01/15/2013

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated impacts to the state budget. The proposed rule will be implemented using existing resources. The agency anticipates a reduction in total permit fee received for CAFO Program because the number of permitted facilities will decrease as a result of the amendments.

♦ LOCAL GOVERNMENTS: Enactment of these amendments likely will not result in direct, measurable costs or savings for local governments. The proposed amendments only apply to animal feeding operations and concentrated animal feeding operations in Utah as provided in the rule.

♦ SMALL BUSINESSES: There are no expected savings due to the rule change, other than the possibility of a few facilities not being subject to penalties for illegally discharging. Under the new rule, AFOs and CAFOs that follow reasonable measures will not be penalized for their discharges. It is anticipated that the rule change will likely not result in direct, measurable costs for the majority of AFOs and CAFOs. Only discharging facilities are required to obtain a permit. These permitted facilities are most likely to have increased costs for compliance, however, the number of permitted facilities is expected to decrease under the new rule. Since the majority of the AFOs and CAFOs are in compliance or should be in compliance with existing federal regulations, most facilities will not require improvements. Permitted CAFOs may have increased record keeping requirements which may involve extra time to comply but there should be no monetary expenditures to achieve compliance. Permitted CAFOs will need a depth-measure in their waste storage structures, however, this should be a low-cost item to install, on the order of $200 - $300 per installation.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of these amendments likely will not result in direct, measurable costs or savings for other persons. The

proposed amendments only apply to animal feeding operations and concentrated animal feeding operations in Utah as provided in the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is anticipated that the rule change will likely not result in direct, measurable costs for the majority of AFOs and CAFOs. Only discharging facilities are required to obtain a permit. These permitted facilities are most likely to have increased costs for compliance, however, the number of permitted facilities is expected to decrease under the new rule. Since the majority of the AFOs and CAFOs are in compliance or should be in compliance with existing federal regulations, most facilities will not require improvements. Permitted CAFOs may have increased record keeping requirements which may involve extra time to comply but there should be no monetary expenditures to achieve compliance. Permitted CAFOs will need a depth-measure in their waste storage structures, however, this should be a low-cost item to install, on the order of $200 - $300 per installation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is anticipated that the rule change will likely not result in direct, measurable costs for the majority of AFOs and CAFOs. Only discharging facilities are required to obtain a permit. These permitted facilities are most likely to have increased costs for compliance, however, the number of permitted facilities is expected to decrease under the new rule. Since the majority of the AFOs and CAFOs are in compliance or should be in compliance with existing federal regulations, most facilities will not require improvements. Permitted CAFOs may have increased record keeping requirements which may involve extra time to comply but there should be no monetary expenditures to achieve compliance. Permitted CAFOs will need a depth-measure in their waste storage structures, however, this should be a low-cost item to install, on the order of $200 - $300 per installation.

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

ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Dave Wham by phone at 801-536-4337, by FAX at 801-536-4301, or by Internet E-mail at dwham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
R317-8. Utah Pollutant Discharge Elimination System (UPDES).
R317-8-1. General Provisions and Definitions.

1.1 COMPARABILITY WITH THE CWA. The UPDES rules promulgated pursuant to the Utah Water Quality Act are intended to be compatible with the Federal regulations adopted pursuant to CWA.

1.2 CONFLICTING PROVISIONS. The provisions of the UPDES rules are to be construed as being compatible with and complementary to each other. In the event that any of these rules are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

1.3 SEVERABILITY. In the event that any provision of these rules is found to be invalid by a court of competent jurisdiction, the remaining UPDES rules shall not be affected or diminished thereby.

1.4 ADMINISTRATION OF THE UPDES PROGRAM. The [~~Executive Secretary of the Utah Water Quality Board~~]Director has responsibility for the administration of the UPDES program, including pretreatment. The responsibility for the program is delegated to the [~~Executive Secretary~~]Director in accordance with UCA Subsection 19-5-104(11) and UCA Subsection 19-5-107(2)(a). The [~~Executive Secretary~~]Director 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.

1.5 DEFINITIONS. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(2) "Applicable standards and limitations" means all standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under Subsection 19-5-104(6) of the Utah Water Quality Act and [~~regulations~~]rules promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal.

(3) "Application" means the forms [~~approved by the Utah Water Quality Board~~]available from the Division, which are the same as the EPA standard NPDES forms, for applying for a UPDES permit, including any additions, revisions or modifications.

(4) "Average monthly discharge limit" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharge measured during a calendar month divided by the number of daily discharges measured during the month.

(5) "Average weekly discharge limit" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a

calendar week divided by the number of daily discharges measured during that week.

(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

(7) "Class I sludge management facility" means any POTW required to have an approved pretreatment program under R317-8-8 and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the [~~Executive Secretary~~]Director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(8) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(9) "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. 1251 et seq.).

(10) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(11) "Direct discharge" means the discharge of a pollutant.

(12) "Discharge of a pollutant" means any addition of any pollutants to "waters of the State" from any "point source." This definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

(13) "Economic impact consideration" means the reasonable consideration given by the [~~Executive Secretary~~]Director to the economic impact of water pollution control on industry and agriculture; provided, however, that such consideration shall be consistent and in compliance with the CWA and EPA promulgated regulations.

~~[(14) "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board or its authorized representative.~~

~~(15)~~](14) "Discharge Monitoring Report (DMR)" means EPA uniform national form or equivalent State form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees.

[~~(16)~~](15) "Draft permit" means a document prepared under R317-8-6.3 indicating the [~~Executive Secretary's~~]Director's preliminary decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as provided in R317-8-5.6 is not a draft permit. A proposed permit prepared after the close of the public comment period is not a draft permit.

[~~(17)~~](16) "Effluent limitation" means any restriction imposed by the [~~Executive Secretary~~]Director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the State.

[~~(18)~~](17) "Effluent limitations guidelines" means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

[~~(19)~~](18) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

[~~(20)~~](19) "Facility or activity" means any UPDES point source, or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the UPDES program.

[~~(21)~~](20) "General permit" means any UPDES permit authorizing a category of discharges within a geographical area, and issued under R317-8-2.5.

[~~(22)~~](21) "Hazardous substance" means any substance designated under 40 CFR Part 116.

[~~(23)~~](22) "Indirect discharge" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

[~~(24)~~](23) "Interstate agency" means an agency of which Utah and one or more states is a member, established by or under an agreement or compact, or any other agency, of which Utah and one or more other states are members, having substantial powers or duties pertaining to the control of pollutants.

[~~(25)~~](24) "Major facility" means any UPDES facility or activity classified as such by the [~~Executive Secretary~~]Director in conjunction with the Regional Administrator.

[~~(26)~~](25) "Maximum daily discharge limitation" means the highest allowable daily discharge.

[~~(27)~~](26) "Municipality" means a city, town, district, county, or other public body created by or under the State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes. For purposes of these rules, an agency designated by the Governor under Section 208 of the CWA is also considered to be a municipality.

[~~(28)~~](27) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the CWA.

[~~(29)~~](28) "New discharger" means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective UPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commenced discharging into waters of the state after August 13, 1979.

[~~(30)~~](29) "New source" means any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced;

(a) After promulgation of EPA's standards of performance under Section 306 of CWA which are applicable to such source, or

(b) After proposal of Federal standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the Federal standards are promulgated in accordance with Section 306 within 120 days of their proposal.

[~~(31)~~](30) "Non-continuous or batch discharge" for a discharge to be considered a non-continuous or batch discharge the following must apply:

(a) Frequency of a non-continuous or batch discharge:

i. shall not occur more than once every three (3) weeks,

ii. shall not be more than once during the three (3) weeks and

iii. shall not exceed 24 hours;

(b) Shall not cause a slug load at the POTW.

[~~(32)~~](31) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under the UPDES program.

[~~(33)~~](32) "Permit" means an authorization, license, or equivalent control document issued by the [~~Executive Secretary~~]Director to implement the requirements of the UPDES [~~regulations~~]rules. "Permit" includes a UPDES "general permit." The term does not include any document which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

[~~(34)~~](33) "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the United States government.

[~~(35)~~](34) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm-water runoff or return flows from irrigated agriculture.

[~~(36)~~](35) "Pollutant" means, for the purpose of these [~~regulations~~]rules, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

[~~(37)~~](36) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the State, unless such alteration is necessary for the public health and safety. Alterations which are not consistent with the requirements of the CWA and implementing regulations shall not be deemed to be alterations necessary for the public health and safety. A discharge not in accordance with Utah Water Quality Standards, stream classification, and UPDES permit requirements, including technology-based standards shall be deemed to be pollution.

[~~(38)~~](37) "Primary industry category" means any industry category listed in R317-8-3.11.

[~~(39)~~](38) "Privately owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a POTW.

[~~(40)~~](39) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

[~~(41)~~](40) "Proposed permit" means a UPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and adjudicative proceedings, which is sent to EPA for review before final issuance by the [~~Executive Secretary~~]Director. A proposed permit is not a draft permit.

[~~(42)~~](41) "Publicly-owned treatment works" (POTW) means any facility for the treatment of pollutants owned by the State, its political subdivisions, or other public entity. For the purposes of these [~~regulations~~]rules, POTW includes sewers, pipes or other conveyances conveying wastewater to a POTW providing treatment, treatment of pollutants includes recycling and reclamation, and pollutants refers to municipal sewage or industrial wastes of a liquid nature.

[~~(43)~~](42) "Recommencing discharger" means a source which resumes discharge after terminating operation.

[~~(44)~~](43) "Regional Administrator" means the Regional Administrator of the Region VIII office of the EPA or the authorized representative of the Regional Administrator.

[~~(45)~~](44) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with the Utah Water Quality Act and rules promulgated pursuant thereto.

[~~(46)~~](45) "Secondary industry category" means any industry category which is not a primary industry category.

[~~(47)~~](46) "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

[~~(48)~~](47) "Seven (7) consecutive day discharge limit" means the highest allowable average of daily discharges over a seven (7) consecutive day period.

[~~(49)~~](48) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of CWA.

[~~(50)~~](49) "Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet dumpings, type III marine sanitation device pumpings, and sewage sludge products.

Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

[~~(51)~~](50) "Sewage sludge use or disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

[~~(52)~~](51) "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

[~~(53)~~](52) "Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act and which is required to obtain a permit under R317-8-2.1.

[~~(54)~~](53) "Standards for sewage sludge use or disposal" means the rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

[~~(55)~~](54) "State/EPA Agreement" means an agreement between the State and the Regional Administrator which coordinates State and EPA activities, responsibilities and programs, including those under the CWA programs.

[~~(56)~~](55) "Thirty (30) consecutive day discharge limit" means the highest allowable average of daily discharges over a thirty (30) consecutive day period.

[~~(57)~~](56) "Toxic pollutant" means any pollutant listed as toxic in R317-8-7.6 or, in the case of sludge use or disposal practices, any pollutant identified as toxic in State adopted rules for the disposal of sewage sludge.

[~~(58)~~](57) "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

[~~(59)~~](58) "Variance" means any mechanism or provision under the UPDES [~~regulations~~]rules which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

[~~(60)~~](59) "Waters of the State" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish or wildlife, shall not be considered to be "waters of the State." The exception for confined bodies of water does not apply to any waters which meet the definition of "waters of the United States" under 40 CFR 122.2. Waters are considered to be confined to and retained within the limits of private property only if there is no discharge or seepage to either surface water or groundwater. Waters of the State includes "wetlands" as defined in the Federal Clean Water Act.

[~~(61)~~](60) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

[~~(62)~~](61) "Whole effluent toxicity" means the aggregate toxic effect of an effluent as measured directly by a toxicity test.

[~~(63)~~](62) "Utah Pollutant Discharge Elimination System (UPDES)" means the State-wide program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under the Utah Water Quality Act.

1.6 DEFINITIONS APPLICABLE TO STORM-WATER DISCHARGES.

(1) "Co-Permittee" means a permittee to a UPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a UPDES permit (other than the UPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) "Incorporated place" means a city or town that is incorporated under the laws of Utah.

(4) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of Census; or

(b) Located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the 1990 Decennial Census by the Bureau of Census, except municipal separate storm sewers that are located in the incorporated places, townships or towns within the County; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) or (b) and that are designated by the [~~Executive Secretary~~]Director as part of a large or medium municipal separate storm sewer system. See R317-8-3.9(6)(a) for provisions regarding this definition.

(5) "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) "Major outfall" means a major municipal separate storm sewer outfall.

(7) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of Census;

(b) Located in counties with unincorporated urbanized areas with a population greater than 100,000 but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) and (b) and that are designated by the [~~Executive Secretary~~]Director as part of the large or medium municipal separate storm sewer system. See R317-8-3.9(6)(b) for provisions regarding this definition.

(8) "MS4" means a municipal separate storm sewer system.

(9) "Municipal separate storm sewer system" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to paragraphs R317-8-1.6(4), (7), and (14) of this section, or designated under paragraph R317-8-3.9(1)(a)5 of this section.

(10) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

(11) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

(12) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(13) "Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA: any chemical the facility is required to report pursuant to section 313 of Title III of SARA: fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(14) "Small municipal separate storm sewer system" means all separate storm sewers that are:

(a) Owned or operated by the United States, State of Utah, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial waste, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State.

(b) Not defined as "large" or "medium" municipal separate storm sewer system pursuant to paragraphs R317-8-1.6(4) and (7) of this section, or designated under paragraph R317-8-3.9(1)(a)5 of this section.

(c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(15) "Small MS4" means a small municipal separate storm sewer system.

(16) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(17) "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program. See R317-8-3.9(6)(c) and (d) for provisions applicable to this definition.

(18) "Uncontrolled sanitary landfill means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runon or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

1.7 ABBREVIATIONS AND ACRONYMS. The following abbreviations and acronyms, as used throughout the UPDES [~~regulations~~]rules, shall have the meaning given below:

(1) "BAT" means best available technology economically achievable;

(2) "BCT" means best conventional pollutant control technology;

(3) "BMPs" means best management practices;

(4) "BOD" means biochemical oxygen demands;

(5) "BPT" means best practicable technology currently available;

(6) "CFR" means Code of Federal Regulations;

(7) "COD" means chemical oxygen demand;

(8) "CWA" means the Federal Clean Water Act;

(9) "DMR" means discharge monitoring report;

(10) "NPDES" means National Pollutant Discharge Elimination System;

(11) "POTW" means publicly owned treatment works;

(12) "SIC" means standard industrial classification;

(13) "TDS" means total dissolved solids;

(14) "TSS" means total suspended solids;

(15) "UPDES" means Utah Pollutant Discharge Elimination System;

(16) "UWQB" means the Utah Water Quality Board;

(17) "WET" means whole effluent toxicity.

1.8 UPGRADE AND RECLASSIFICATION. Upgrading or reclassification of waters of the State by the Utah Water Quality Board may be done periodically, but only using procedures and in a manner consistent with the requirements of State and Federal law.

1.9 PUBLIC PARTICIPATION. [~~In addition to adjudicatory proceedings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these regulations, the Executive Secretary~~]The Division will investigate and provide written response to all citizen complaints. In addition, the [~~Executive Secretary~~]Director 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~~]Director will publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

1.10 INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE. The State adopts the following Federal standards and procedures, effective as of December 8, 1999 unless otherwise noted, which are incorporated by reference:

(1) 40 CFR 129 (Toxic Effluent Standards) with the following exceptions:

(a) Substitute "UPDES" for all federal regulation references to "NPDES".

(b) Substitute [~~"Executive Secretary"~~]Director of the Division of Water Quality for all federal regulation references to "State Director".

(c) Substitute "R317-8-4.4, R317-8-6, and R317-8-7" for all federal regulation references to "40 CFR Parts 124 and 125".

(2) 40 CFR 133 (Secondary Treatment Regulation) with the following exceptions:

(a) 40 CFR 133.102 for which R317-1-3.2 is substituted.

(b) 40 CFR 133.105.

(c) Substitute "UPDES" or "Utah Pollutant Discharge Elimination System" for all federal regulation references for "NPDES" or "National Pollutant Discharge Elimination System", respectively.

(d) Substitute [~~"Executive Secretary"~~]Director of the Division of Water Quality for all federal regulation references to "State Director" in 40 CFR 133.103.

(3) 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants)

(4) 40 CFR 403.6 (National Pretreatment Standards and Categorical Standards), effective as of May 16, 2008, with the following exception:

(a) Substitute [~~"Executive Secretary"~~]Director of the Division of Water Quality for all federal regulation references to "Director".

(5) 40 CFR 403.7, effective as of May 16, 2008, (Removal Credits)

(6) 40 CFR 403.13, effective as of May 16, 2008, (Variances from Categorical Pretreatment Standards for Fundamentally Different Factors)

(7) 40 CFR Parts 405 through 411

(8) 40 CFR Part 412, effective as of [~~February 12, 2003~~]July 30, 2012, with the following changes:

(a) Substitute [~~"Executive Secretary"~~]Director of the Division of Water Quality for all federal regulation references to "Director".

(b) Substitute "UPDES" for all federal regulation references to "NPDES".

(c) Substitute "surface waters" of the state for all federal regulation references to "surface water," "waters of the United States," "navigable waters," or "U.S. waters."[~~Substitute "Comprehensive Nutrient Management Plan" for all federal regulation references to "nutrient management plan".~~

~~(d) In 412.37(b), replace the reference 122.21(i)(1) with R317-8-3.6(2); and 122.42(e)(1)(ix) with R317-8-4.1(15)(d)1.i.~~

~~(e) In 412.37(c), replace the reference 122.42(e)(1)(ix) with R317-8-4.1(15)(d)1.i.~~]

(9) 40 CFR Parts 413 through 471

(10) 40 CFR 503 (Standards for the Use or Disposal of Sewage Sludge), effective as of the date that responsibility for implementation of the federal Sludge Management Program is delegated to the State except as provided in R317-1-6.4, with the following changes:

(a) Substitute [~~"Executive Secretary"~~]Director of the Division of Water Quality for all federal regulation references to "Director".

(11) 40 CFR 122.30

(12) 40 CFR 122.32

(a) In 122.32(a)(2), replace the reference 122.26(f) with R317-8-3.9(5).

(13) 40 CFR 122.33

(a) In 122.33(b)(2)(i), replace the reference 122.21(f) with R317-8-3.1(6).

(b) In 122.33(b)(2)(i), replace the reference 122.21(f)(7) with R317-8-3.1(6)(g).

(c) In 122.33(b)(2)(ii), replace the reference 122.26(d)(1) and (2) with R317-8-3.9(3)(a) and (b)

(d) In 122.33(b)(3), replace the reference 122.26 with R317-8.

(e) In 122.33(b)(3), replace the reference 122.26(d)(1)(iii) and (iv); and (d)(2)(iv) with R317-8-3.9(3)(a)3 and 4; and (3)(b)4.

(14) 40 CFR 122.34

(a) In 122.34(a), replace the reference 122.26(d) with R317-8-3.9(3).

(b) In 122.34(b)(3)(i), replace the reference 122.26(d)(2) with R317-8-3.9(3)(b).

(c) In 122.34(b)(4)(i), replace the reference 122.26(b)(15)(i) with R317-8-3.9(6)(e)1.

(d) In 122.34(f), replace the references 122.41 through 122.49 with R317-8-4.1 through R317-8-5.4.

(e) In 122.34(g)(2), replace the reference 122.7 with R317-8-3.3.

(15) 40 CFR 122.35

(a) In 122.35, replace the reference 122 with R317-8.

(16) 40 CFR 122.36

(17) For the references R317-8-1.10(12), (13), (14), (15), and (16), make the following substitutions:

(a) Substitute the Director of the Division of Water Quality [~~"The Executive Secretary of the Water Quality Board"~~] for the "NPDES permitting authority"

(b) Substitute "UPDES" for "NPDES"

(18) [~~40 CFR 122.23, effective as of February 12, 2003, with the following changes:~~

~~(a) Substitute "Executive Secretary" for all federal regulation references to "Director".~~

~~(b) Substitute "UPDES" for all federal regulation references to "NPDES".~~

~~(c) In 122.23(d)(3), replace the reference 122.21 with R317-8-3.1; and 122.28 with R317-8-2.5.~~

~~(d) In 122.23(e), replace the reference 122.42 (e)(1)(vi)-(ix) with R317-8-4.1(15)(d)1.f.-i.~~

~~(e) In 122.23(f)(2), replace the reference 122.21(f) with R317-8-3.1(6); and 122.21(i)(1)(i)-(ix) with R317-8-3.6(2)(a)-(i).~~

~~(f) In 122.23(h), replace the reference 122.21(g) with R317-8-3.1(4).~~]40 CFR 122.21(i), 40 CFR 122.23(a), 40 CFR 122.23(b)(3), 40 CFR 122.23(b)(5), 40 CFR 122.23(b)(7), 40 CFR 122.23(b)(8), 40 CFR 122.23(c), 40 CFR 122.23(d)(2), 40 CFR 122.23(e), 40 CFR 122.23(h), 40 CFR 122.28(b)(2), 40 CFR 122.42(e), 40 CFR 122.62(a)(17), and 40 CFR 122.63(h), with the following substitutions:

(a) Substitute "Director of the Division of Water Quality" for all federal regulation references to "Director" or "State Director".

(b) Substitute "UPDES" for all federal regulation references to "NPDES".

(c) Substitute "surface waters of the state" for all federal regulation references to "surface water," "waters of the United States," "navigable waters," or "U.S. waters."

R317-8-2. Scope and Applicability.

2.1 APPLICABILITY OF THE UPDES REQUIREMENTS. The UPDES program requires permits for the discharge of pollutants from any point source into waters of the State. The program also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a UPDES permit in accordance with R317-8-8. Prior to promulgation of State rules for sewage sludge use and disposal, the [~~Executive Secretary~~]Director shall impose interim conditions in permits issued for publicly owned treatment works or take such other measures as the [~~Executive Secretary~~]Director deems appropriate to protect public health and the environment from any adverse affects which may occur from toxic pollutants in sewage sludge.

(1) Specific inclusions. The following are examples of specific categories of point sources requiring UPDES permits for discharges. These terms are further defined in R317-8-3.5 through [~~R317-8-9.2.~~]R317-8-10.9:

(a) Concentrated animal feeding operations;

(b) Concentrated aquatic animal production facilities;

(c) Discharges into aquaculture projects;

(d) Storm water discharges;

(e) Silvicultural point sources; and

(f) Pesticide discharges.

(2) Specific exclusions. The following discharges do not require UPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to storage facility or a seafood processing facility, or when secured in waters of the state for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the State which are regulated under Section 404 of CWA.

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the State are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, but not discharges from concentrated animal feeding operations as defined in [~~40 CFR 122.23~~]R317-8-10, discharges from concentrated aquatic animal production facilities as defined in R317-8-3.7, discharges to aquaculture projects as defined in R317-8-3.8, and discharges from silvicultural point sources as defined in R317-8-3.10.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the [~~Executive Secretary~~]Director may otherwise require under R317-8-4.2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, and which are issued under the state's Underground Injection Control program; and underground injections and disposal wells which are permitted by the [~~Utah Water Quality Board~~]Director pursuant to Part VII of the Utah Wastewater Disposal Regulations or the Board of Oil, Gas and Mining, Class II.

(i) Discharges which are not regulated by the U.S. EPA under Section 402 of the Clean Water Act.

(3) Requirements for permits on a case-by-case basis.

(a) Various sections of R317-8 allow the [~~Executive Secretary~~]Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, separate storm sewers and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the [~~Executive Secretary~~]Director decides that an individual permit is required as specified in R317-8-2.1(3)(a), the [~~Executive Secretary~~]Director shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit within 60 days of receipt of notice, unless permission for a later date is granted by the [~~Executive Secretary~~]Director. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent adjudicative proceeding.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the [~~Executive Secretary~~]Director may require the discharger to submit a permit application or other information regarding the discharge. In requiring such information, the [~~Executive Secretary~~]Director shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the [~~Executive Secretary~~]Director. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent adjudicative proceeding.

2.2 PROHIBITIONS. No permit may be issued by the [~~Executive Secretary~~]Director:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of the Utah Water Quality Act, as amended, or rules promulgated pursuant thereto;

(2) When the Regional Administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR 123.44;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Utah and all affected states;

(4) When, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of CWA.

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Utah water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the UPDES [~~regulations~~]rules and for which the [~~Executive Secretary~~]Director has performed a wasteload allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining wasteload allocations to allow for the discharge; and

(b) The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with Utah Water Quality Standards. (See R317-2.)

2.3 VARIANCE REQUESTS BY NON-POTW'S. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the time period specified in this section:

(1) Fundamentally different factors.

(a) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

1. For a request for a variance from best practicable control technology currently available (BPT) by the close of the public comment period under R317-8-6.5.

2. For a request for a variance from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT) by no later than:

a. July 3, 1989, for a request on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations: or

b. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

3. Requests should be filed with the [~~Executive Secretary~~]Director. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(b) The request shall explain how the requirements of the applicable regulatory and statutory criteria have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided, however, that 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the [~~Executive Secretary~~]Director to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant listed by the Administrator under Section 301((g)(4) of the CWA) must be filed as follows:

(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

1. Filing an initial request with the [~~Executive Secretary~~]Director stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and the nature of the modification being requested. This request must have been filed not later than:

a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977: or

b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977: and

2. Submitting a completed request no later than the close of the public comment period under R317-8-6.5 demonstrating that the requirements of R317-8-6.8 and the applicable requirements of R317-8-8.8 have been met. Notwithstanding this provision, the complete application for a request shall be filed 180 days before the [~~Executive Secretary~~]Director must make a decision (unless the [~~Executive Secretary~~]Director establishes a shorter or longer period). For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with R317-8-2.3(2)(a)(2) and need not be preceded by an initial request under R317-8-2.3(2)(a)(2).

3. Requests should be filed with the [~~Executive Secretary~~]Director. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(3) Delay in construction of POTW. An extension of the Federal statutory deadlines based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under R317-8-2.7, whichever is later, but in no event may this date have been later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) Innovative technology. An extension from the Federal statutory deadline for best available technology, or for best conventional pollutant control technology, based on the use of innovative technology may be requested no later than the close of the public comment period under Section R317-8-6.5 for the discharger's initial permit requiring compliance with best available technology or best conventional pollutant control technology. The request shall demonstrate that the requirements of Section R317-8-6.8 and 8-5.6 have been met.

(5) Thermal discharges. A variance for the thermal component of any discharge must be filed with a timely application for a permit under R317-8-3 except that if thermal effluent limitations are established by EPA or are based on water quality standards the request for a variance may be filed by the close of the public comment period under R317-8-6.5.

(6) Water Quality Related Effluent Limitations. A modification of requirements for achieving water quality-related effluent limitations may be requested no later than the close of the public comment period under R317-8-6.5 on the permit from which the modification is sought.

2.4 EXPEDITED VARIANCE PROCEDURES AND TIME EXTENSIONS. Notwithstanding the time requirements in R317-8-2.3, the [~~Executive Secretary~~]Director may notify a permit applicant before a draft permit is issued under R317-8-6.3 that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the [~~Executive Secretary~~]Director may require that the applicant, as a condition of consideration of any potential variance request, submit a request explaining how the requirements of R317-8-7 applicable to the variance have been met. The [~~Executive Secretary~~]Director may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under R317-8-2.3(2) may request an extension. The extension may be granted or denied at the discretion of the [~~Executive Secretary~~]Director. Extensions will be no more than six months in duration.

2.5 GENERAL PERMITS

(1) Coverage. The [~~Executive Secretary~~]Director may issue a general permit in accordance with the following:

(a) Area. The general permit will be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under Sections 208 and 303 of CWA;

2. City, county, or state political boundaries;

3. State highway systems;

4. Standard metropolitan statistical areas as defined by the U.S. Office of Management and Budget;

5. Urbanized areas as designated by the U.S. Bureau of the Census, consistent with the U.S. Office of Management and Budget;

6. Any other appropriate division or combination of boundaries as determined by the [~~Executive Secretary~~]Director.

(b) Sources. The general permit will be written to regulate, within the area described in R317-8-2.5(a), either;

1. Storm water point sources; or

2. A category of point sources other than storm water point sources, or a category of treatment works, treating domestic sewage, if the sources or treatment works treating domestic sewage all:

a. Involve the same or substantially similar types of operations;

b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices.

c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;

d. Require the same or similar monitoring; and

e. In the opinion of the [~~Executive Secretary~~]Director, are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-6.

(b) Authorization to discharge, or authorization to engage in sludge use and disposal practices.

1. Except as provided in paragraphs (2)(b)5. and (2)(b)6. of this section, discharges (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the [~~Executive Secretary~~]Director a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (2)(b)5. of this section, contains a provision that a notice of intent is not required or the [~~Executive Secretary~~]Director notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (2)(b)6. of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of R-317-8-3.

2. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility of discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfill occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in R317-8-[~~3.6(2)~~]10, including a topographic map. All notices of intent shall be signed in accordance with R317-8-3.3.

3. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;

4. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use for disposal practice), in accordance with the permit either upon receipt of the notice of intent by the [~~Executive Secretary~~]Director, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the [~~Executive Secretary~~]Director. Coverage may be terminated or revoked in accordance with paragraph (2)(c) of this section.

5. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the [~~Executive Secretary~~]Director, be authorized to discharge under a general permit without submitting a notice of intent where the [~~Executive Secretary~~]Director finds that a notice of intent

requirement would be inappropriate. In making such a finding, the [~~Executive Secretary~~]Director shall consider: the type of discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The [~~Executive Secretary~~]Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

6. The [~~Executive Secretary~~]Director may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph R317-8-2.5(2)(c).

(c) Requiring an individual permit.

1. The [~~Executive Secretary~~]Director may require any person authorized by a general permit to apply for and obtain an individual UPDES permit. Any interested person may petition the [~~Executive Secretary~~]Director to take action under R317-8-2.4. Cases where an individual UPDES permit may be required include the following:

a. The discharge(s) is a significant contributor of pollutants. In making this determination, the [~~Executive Secretary~~]Director may consider the following factors:

i. The location of the discharge with respect to waters of the State;

ii. The size of the discharge;

iii. The quantity and nature of the pollutants discharged to waters of the State; and

iv. Other relevant factors;

b. The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general UPDES permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

d. Effluent limitation guidelines are promulgated for point sources covered by the general UPDES permit;

e. A Utah Water Quality Management Plan containing requirements applicable to such point sources is approved;

f. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practices covered by the general UPDES permit; or

2. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under R317-8-3.1 to the [~~Executive Secretary~~]Director with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the [~~Executive Secretary~~]Director in accordance with R317-8-6.5. If the reasons cited by the owner or operator are adequate to support the request, the [~~Executive Secretary~~]Director may issue an individual permit.

3. When an individual UPDES permit is issued to an owner or operator otherwise subject to a general UPDES permit, the applicability of the general permit to the individual UPDES permittee is automatically terminated on the effective date of the individual permit.

4. A source excluded from a general permit solely because he already has an individual permit may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

2.6 DISPOSAL OF POLLUTANTS INTO WELLS, INTO POTWS OR BY LAND APPLICATION.

(1) The [~~Executive Secretary~~]Director may issue UPDES permits to control the disposal of pollutants into wells when necessary to protect the public health and welfare, and to prevent the pollution of ground and surface waters.

(2) When part of a discharger's process wastewater is not being discharged into waters of the State (including groundwater) because it is disposed of into a well, into a POTW, or by land application, thereby reducing the flow or level of pollutants being discharged into waters of the State, applicable effluent standards and limitations for the discharge in a UPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the State and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in R317-8-2.6(2)(a), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater to be treated and discharged into waters of the State and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under R317-8-7.3 to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

This method may be algebraically expressed as: $P = E \times N/T$

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the State and T is the total wastewater flow.

(3) R317-8-2.6(2) shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) R317-8-2.6(2) does not alter a dischargers obligation to meet any more stringent requirements established under R317-8-4.

2.7 VARIANCE REQUESTS BY POTWS. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under the following provision:

(1) Water Quality Based Effluent Limitation. A permit modification of the requirements for achieving water quality based effluent limitations shall be requested no later than the close of the

public comment period under R317-8-6.5 on the permit for which the modification is sought.

(2) Delay in construction. An extension of a Federal statutory deadline based on delay in the construction of the POTW must have been requested on or before August 3, 1987.

2.8 DECISION ON VARIANCES

(1) The [~~Executive Secretary~~]Director may deny or forward to the Administrator (or his delegate) with a written concurrence, a completed request for:

(a) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(b) After consultation with the Regional Administrator, extensions based on the use of innovative technology; or

(c) Variances under R317-8-2.3(4) for thermal pollution.

(2) The [~~Executive Secretary~~]Director may deny or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(a) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(b) A variance based on the economic capability of the applicant;

(c) A variance based upon certain water quality factors (See CWA section 301(g)); or

(d) A variance based on water quality related effluent limitations.

(e) Except for information required by R317-8-3.1(4)(c) which shall be retained for a period of at least five years from the date the application is signed, applicants shall keep records of all data used to complete permit applications and any supplemental information for a period of at least three years from the date the application is signed.

R317-8-3. Application Requirements.

3.1 APPLYING FOR A UPDES PERMIT

(1) Application requirements

(a) Any person who is required to have a permit, including new applicants and permittees with expiring permits shall complete, sign, and submit an application to the [~~Executive Secretary~~]Director as described in this [~~regulation~~]rule and R317-8-2 Scope and Applicability. On the date of UPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a UPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR 122.6. For the purpose of this section the [~~Executive Secretary~~]Director will accept the information required under R317-8-3.5 for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(b) Any person who (1) discharges or proposes to discharge pollutants and (2) owns or operates a sludge-only facility and does not have an effective permit, shall submit a complete application to the [~~Executive Secretary~~]Director in accordance with this section and R317-8-6. A complete application shall include a BMP program, if necessary, under R317-8-4.2(10). The following are exceptions to the application requirements:

1. Persons covered by general permits under R317-8-4.2(10);

2. Discharges excluded under R317-8-2.1(2);

3. Users of a privately owned treatment works unless the [~~Executive Secretary~~]Director requires otherwise under R317-8-4.2(12).

(2) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the [~~Executive Secretary~~]Director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under R317-8-3.9(6)11 shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. See also R317-8-3.2 and R317-8-3.9(2)1.g. and 2.

(3) Who Applies. When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit.

(4) Duty to reapply.

(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the [~~Executive Secretary~~]Director. The [~~Executive Secretary~~]Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that:

1. The [~~Executive Secretary~~]Director may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date; and

2. The [~~Executive Secretary~~]Director may grant permission to submit the information required by R317-8-3.5(7), (9) and (10) after the permit expiration date.

(c) All applicants for permits, other than POTWs, new sources, and sludge-only facilities must complete EPA Forms 1 and either 2B or 2C or 2F or equivalent State forms as directed by the [~~Executive Secretary~~]Director to apply under R317-8-3. Forms may be obtained from the [~~Executive Secretary~~]Director. In addition to any other applicable requirements in this section, all POTWs and other treatment works treating domestic sewage, including sludge-only facilities, must submit with their applications the information listed at 40 CFR 501.15(a)(2) within the time frames established in R317-8-3.1(7)(a) and (b).

(d) Continuation of expiring permits. The conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

2. The [~~Executive Secretary~~]Director, through no fault of the permittee, does not issue a new permit with an effective date under R317-8-6.11 on or before the expiration date of the previous permit.

3. Effect Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

4. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the [~~Executive Secretary~~]Director may choose to do any or all of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under R317-8-6.3(2);

c. Issue a new permit under R317-8-6 with appropriate conditions; or

d. Take other actions authorized by the UPDES [~~regulations~~]rules.

(5) Completeness. The [~~Executive Secretary~~]Director will not issue a UPDES permit before receiving a complete application for a permit except for UPDES General Permits. A permit application is complete when the [~~Executive Secretary~~]Director receives an application form with any supplemental information which is completed to his or her satisfaction.

(6) Information requirements. All applicants for UPDES permits shall provide the following information to the [~~Executive Secretary~~]Director, using the application form provided by the [~~Executive Secretary~~]Director.

(a) The activities being conducted which require the applicant to obtain UPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) From one (1) to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The operators name, address, telephone number, ownership status, and status as to Federal, State, private, public, or other entity.

(e) Whether the facility is located on Indian lands.

(f) A listing of all other relevant environmental permits, or construction approvals issued by the [~~Executive Secretary~~]Director or other state or federal permits.

(g) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(h) A brief description of the nature of the business.

(i) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to new source [~~regulations~~]rules promulgated by the [~~Executive Secretary~~]Director.

(7) Permits Under Section 19-5-107 of the Utah Water Quality Act.

(a) POTWs with currently effective UPDES permits shall submit the application information required by R317-8-3.1(4)(c) with the next application submitted in accordance with R317-8-3.1(4) of this section or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to the POTW's sludge use or disposal practice(s), whichever occurs first.

(b) Any other existing treatment works treating domestic sewage not covered in R317-8-3.1(7)(a) shall submit an application to the [~~Executive Secretary~~]Director within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practice(s) or upon request of the [~~Executive Secretary~~]Director prior to the promulgation of an applicable standard for sewage sludge use or disposal if the [~~Executive Secretary~~]Director determines that a permit is necessary to protect to public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(c) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the [~~Executive Secretary~~]Director at least 180 days prior to the date proposed for commencing operations.

(8) Recordkeeping. Except for information required by R317-8-3.1(7)(c) which shall be retained for a period of at least five years from the date the application is signed or longer as required by the [~~Executive Secretary~~]Director, applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this [~~regulation~~]rule for a period of at least three (3) years from the date the application is signed.

(9) Service of process. Every applicant and permittee shall provide the [~~Executive Secretary~~]Director an address for receipt of any legal paper for service of process. The last address provided to the [~~Executive Secretary~~]Director pursuant to this provision shall be the address at which the [~~Executive Secretary~~]Director may tender any legal notice, including but not limited to service of process in connection with any enforcement action. Service, whether by bond or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

(10) Application Forms. The State will use EPA-developed NPDES application forms or State equivalents in administering the UPDES program.

3.2 APPLICATION REQUIREMENTS FOR NEW SOURCES AND NEW DISCHARGES. New manufacturing, commercial, mining and silvicultural dischargers applying for UPDES permits (except for new discharges of facilities subject to the requirements of R317-8-3.5 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~~]Director, using application forms provided by the [~~Executive Secretary~~]Director:

(1) Expected outfall location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) Discharge dates. The expected date of commencement of discharge.

(3) Flows, Sources of Pollution and Treatment Technologies

(a) Expected treatment of wastewater. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by

each operation, and the ultimate disposal of any solid or liquid wastes not discharged.

(b) Line drawing. A line drawing of the water flow through the facility with a water balance as described in R317-8-3.5(2).

(c) Intermittent Flows. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).

(4) Production. If a new source performance standard or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard as required by R317-8-4.3(2)(b) for each of the first three years. Alternative estimates may also be submitted if production is likely to vary.

(5) Effluent Characteristics. The requirements in R317-8-3.5(7) that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of R317-8-4.3(7) are met. All levels (except for discharge flow, temperature and pH) must be estimated as concentration and as total mass.

(a) Each applicant must report estimated daily maximum, daily average and source of information for each outfall for the following pollutants or parameters. The [~~Executive Secretary~~]Director may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

1. Biochemical Oxygen Demand (BOD).
2. Chemical Oxygen Demand (COD).
3. Total Organic Carbon (TOC).
4. Total Suspended Solids (TSS).
5. Flow.
6. Ammonia (as N).
7. Temperature (winter and summer).
8. pH.

(b) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV, R317-8-3.12(4) (certain conventional and nonconventional pollutants).

(c) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

1. The pollutants listed in Table III, R317-8-3.12(3) (the toxic metals, in the discharge from any outfall: Total cyanide, and total phenols);

2. The organic toxic pollutants in R317-8-3.12(2) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(d) The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

1. 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

2. 2-(2,4,5-trichlorophenoxy) propanic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

3. 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);)

4. 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

5. 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

6. Hexachlorophene (HCP) (CAS #70-80-4);

(e) Each applicant must report any pollutants listed in Table V, R317-8-3.12(5) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(f) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of NPDES application Form 2c (see R317-8-3.5). However, the applicant need not complete those portions of Item V requiring tests which he has already performed and reported under the discharge monitoring requirements of his UPDES permit.

(6) Engineering Report. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge.

(7) Other information. Any optional information the permittee wishes to have considered.

(8) Certification. Signature of certifying official under R317-8-3.4.

3.3 CONFIDENTIALITY OF INFORMATION

(1) Any information submitted to the [~~Executive Secretary~~]Director pursuant to the UPDES [~~regulations~~]rules 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~~]Director 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~~]Director 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

(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~~]Director 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~~]Director.

(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~~]Director 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."

(5) Discharge Monitoring Reports and related information may be signed and submitted electronically to the EPA's NetDMR program, if a Subscriber Agreement is in place. See Utah Admin. Code R317-1-9.

3.5 APPLICATION REQUIREMENTS FOR EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL DISCHARGERS

Existing manufacturing, commercial, mining, and silvicultural dischargers applying for UPDES permits shall provide the following information to the [~~Executive Secretary~~]Director, using application forms provided by the [~~Executive Secretary~~]Director:

(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~~]Director 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 or E. coli. 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~~]Director 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~~]Director). 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, or E. coli, and fecal streptococcus. The [~~Executive Secretary~~]Director 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~~]Director 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~~]rule, 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~~]rule, 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~~]Director 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~~]Director 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~~]Director, upon request, other information as the [~~Executive Secretary~~]Director 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

[~~(1) Permit required. All concentrated animal feeding operations have a duty to seek coverage under a UPDES permit, as described in 40 CFR 122.23(d).~~

~~(2) Application requirements for new and existing concentrated animal feeding operations. New and existing concentrated animal feeding operations (defined in 40 CFR 122.23) shall provide the following information to the Executive Secretary, using the application form provided by the Executive Secretary:~~

~~(a) The name of the owner or operator;~~

~~(b) The facility location and mailing addresses;~~

~~(c) Latitude and longitude of the production area (entrance to production area);~~

~~(d) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area;~~

~~(e) Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);~~

~~(f) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage(tons/gallons);~~

~~(g) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;~~

~~(h) Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons);~~

~~(i) Estimated amounts of manure, litter and process wastewater transferred to other persons per year (tons/gallons); and~~

~~(j) For CAFOs that seek permit coverage after December 31, 2006, certification that a Comprehensive Nutrient Management Plan (CNMP) has been completed and will be implemented upon the date of permit coverage.~~

~~(3) Technical standards for nutrient management. UPDES permits issued to concentrated animal feeding operations shall contain technical standards for nutrient management as outlined in 40 CFR 412.4. The technical standards for nutrient management shall conform with the standards contained in the Utah Natural Resources Conservation Service Conservation Practice Standard Code 590 Nutrient Management.~~](1) Refer to R317-8-10 for concentrated animal feeding operation permit application requirements.

3.7 CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES

(1) Permit required. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in R317-8-3.7(5) or which the [~~Executive Secretary~~]Director designates under R317-8-3.7(3).

(3) Case-by-Case designation of concentrated aquatic animal production facilities.

(a) The [~~Executive Secretary~~]Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the [~~Executive Secretary~~]Director will consider the following factors:

1. The location and quality of the receiving waters of the State;

2. The holding, feeding, and production capacities of the facility;

3. The quantity and nature of the pollutants reaching waters of the State; and

4. Other relevant factors.

(b) A permit application will not be required from a concentrated aquatic animal production facility designated under this section until the [~~Executive Secretary~~]Director or authorized representative has conducted an on-site inspection of the facility and has determined that the facility could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated aquatic animal production facilities shall provide the following information to the [~~Executive Secretary~~]Director using the application form provided:

(a) The maximum daily and average monthly flow from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the source of intake water.

(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of food fed during that month.

(5) Criteria for determining a concentrated aquatic animal production facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this [~~regulation~~]rule if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water aquatic animals. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

3. Cold water aquatic animals include, but are not limited to the Salmonidae family of fish.

(b) Warm water aquatic animals. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

1. Closed ponds which discharge only during periods of excess runoff; or

2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000) pounds) of aquatic animals per year.

3. "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrachidae and Cyprinidae families of fish.

3.8 AQUACULTURE PROJECTS

(1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the UPDES permit program.

(2) Definitions.

(a) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(b) "Designated project areas" means the portions of the waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

3.9 STORM WATER DISCHARGES

(1) Permit requirement.

(a) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:

1. A discharge with respect to which a permit has been issued prior to February 4, 1987;

2. A discharge associated with industrial activity;

3. A discharge from a large municipal separate storm sewer system;

4. A discharge from a medium municipal separate storm sewer system;

5. A discharge which the [~~Executive Secretary~~]Director 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~~]Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the [~~Executive Secretary~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director, 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(10)).

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~~]Director 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~~]Director 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(11) through R317-8-1.10(13). Operators of non-municipal sources designated pursuant to paragraph (1)(h)1.b; (1)(h)1.c; and (1)(h)1.d of this section shall seek coverage under a UPDES permit in accordance with paragraph (2)(a) of this section.

3. Operators of storm water discharges designated pursuant to paragraphs (1)(h)1.c. and (1)(h)1.d. of this section shall apply to the [~~Executive Secretary~~]Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the [~~Executive Secretary~~]Director (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~~]Director 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~~]Director 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~~]Director 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~~]Director (based on information received in part 1 of the application, the [~~Executive Secretary~~]Director 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~~]Director 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~~]Director 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~~]Director for determining permit conditions (the [~~Executive Secretary~~]Director 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 modeling, 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~~]Director 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~~]Director 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~~]Director 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~~]Director by November 18, 1991;

2. Based on information received in the part 1 application the [~~Executive Secretary~~]Director 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~~]Director 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~~]Director by May 18, 1992.

2. Based on information received in the part 1 application the [~~Executive Secretary~~]Director 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~~]Director 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~~]Director for;

1. A storm water discharge which the [~~Executive Secretary~~]Director 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(11)) 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(10)) 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(10) and (11)).

(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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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 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~~]Director 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~~]Director 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~~]Director once every five years;

4. Allow the [~~Executive Secretary~~]Director or authorized representative to inspect the facility to determine compliance with the "no exposure" conditions;

5. Allow the [~~Executive Secretary~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director may designate small MS4's other than those described in 40 CFR 122.32(a)(1) (see also R317-8-1.10(10)) 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(10)).

3.10 SILVICULTURAL ACTIVITIES

(1) Permit requirements. Silvicultural point sources, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

(b) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(c) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

3.11 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~~]Director.

(a) All POTWs with design influent flows equal to or greater than one million gallons per day; and

(b) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(2) In addition to the POTWs listed in R317-8-3.11(1)(a) and (b) the [~~Executive Secretary~~]Director may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(b) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; or

(e) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW),

which the [~~Executive Secretary~~]Director determines could cause or contribute to adverse water quality impacts.

(3) For POTWs required under R317-8-3.11(1) or (2) to conduct toxicity testing. POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last UPDES permit reissuance or permit modification under R317-8-5.6(1) whichever occurred later. Prior to conducting toxicity testing, permittees shall contact the [~~Executive Secretary~~]Director regarding the testing methodology to be used.

(4) All POTWs with approved pretreatment programs shall provide to the [~~Executive Secretary~~]Director a written technical evaluation of the need to revise local limits.

3.12 PRIMARY INDUSTRY CATEGORIES. Any UPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the UPDES [~~regulations~~]rules and Sections 301(b)(2)(A),(C),(D),(E) and (F) of the CWA whether or not applicable effluent limitations guidelines have been promulgated.

(1) Adhesives and sealants
(2) Aluminum forming
(3) Auto and other laundries
(4) Battery manufacturing
(5) Coal mining
(6) Coil coating
(7) Copper forming
(8) Electrical and electronic components
(9) Electroplating
(10) Explosives manufacturing
(11) Foundries
(12) Gum and wood chemicals
(13) Inorganic chemicals manufacturing
(14) Iron and steel manufacturing
(15) Leather tanning and finishing
(16) Mechanical products manufacturing
(17) Nonferrous metals manufacturing
(18) Ore mining
(19) Organic chemicals manufacturing
(20) Paint and ink formulation
(21) Pesticides
(22) Petroleum refining
(23) Pharmaceutical preparations
(24) Photographic equipment and supplies
(25) Plastics processing
(26) Plastic and synthetic materials manufacturing
(27) Porcelain enameling
(28) Printing and publishing
(29) Pulp and paper mills
(30) Rubber processing
(31) Soap and detergent manufacturing
(32) Steam electric power plants
(33) Textile mills
(34) Timber products processing

3.13 UPDES 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) E. coli
(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

3.14 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:

(1) Coal mines.

(2) Testing and reporting for all four organic fractions in the Greige Mills subcategory of the Textile Mills Industry and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(3) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four fractions in all other subcategories of this industrial category.

(4) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Testing and reporting for the pesticide fraction in the Tall Oil Resin Subcategory and Rosin-Based Derivatives Subcategory of the Gum and Wood Chemicals industry and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

(6) Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

(7) Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

(8) Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories of the Pulp and Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink Dissolving Kraft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semi-Chemical and Nonintegrated Fine

Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving, Sulfite Pulp, Groundwood-Fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated-Tissue Papers.

(9) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

R317-8-4. Permit Conditions.

4.1 CONDITIONS APPLICABLE TO ALL UPDES PERMITS. The following conditions apply to all UPDES permits. Additional conditions applicable to UPDES permits are in R317-8-4.1(15). All conditions applicable shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these [~~regulations~~]rules must be given in the permit. In addition to conditions required in all UPDES permits, the [~~Executive Secretary~~]Director 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~~]Director, within a reasonable time, any information which the [~~Executive Secretary~~]Director 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~~]Director, upon request, copies of records required to be kept by the permit.

(9) Inspection and Entry. The permittee shall allow the [~~Executive Secretary~~]Director, or an authorized representative, including an authorized contractor acting as a representative of the [~~Executive Secretary~~]Director) 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director. The [~~Executive Secretary~~]Director 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~~]Director for reporting results of monitoring of sludge use or disposal practices. Monitoring results may also be submitted electronically to the EPA's NetDMR program, if a Subscriber Agreement is in place. See Utah Admin. Code R317-1-9.

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~~]Director.

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~~]Director 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~~]Director in the permit to be reported within twenty-four hours, as indicated in R317-8-4.2(7). The [~~Executive Secretary~~]Director 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~~]Director, 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) or (d).

(c) Prohibition of Bypass.

1. Bypass is prohibited, and the [~~Executive Secretary~~]Director may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of human 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)(d).

2. The [~~Executive Secretary~~]Director may approve an anticipated bypass, after considering its adverse effects, if the [~~Executive Secretary~~]Director determines that it will meet the three conditions listed in R317-8-4.1(13)(c) a, b, and c.

(d) Notice.

1. Anticipated bypass. Except as provided in R317-8-4.1(13)(b) and R317-8-4.1(13)(d)2, if the permittee knows in advance of the need for a bypass, it shall submit prior notice, at least 90 days before the date of bypass. The prior notice shall include the following unless otherwise waived by the [~~Executive Secretary~~]Director:

a. Evaluation of alternatives to the bypass, including cost-benefit analysis containing an assessment of anticipated resource damages;

b. A specific bypass plan describing the work to be performed including scheduled dates and times. The permittee must notify the [~~Executive Secretary~~]Director in advance of any changes to the bypass schedule;

c. Description of specific measures to be taken to minimize environmental and public health impacts;

d. A notification plan sufficient to alert all downstream users, the public and others reasonably expected to be impacted by the bypass;

e. A water quality assessment plan to include sufficient monitoring of the receiving water before, during and following the bypass to enable evaluation of public health risks and environmental impacts; and

f. Any additional information requested by the [~~Executive Secretary~~]Director.

2. Emergency Bypass. Where ninety days advance notice is not possible, the permittee must notify the [~~Executive Secretary~~]Director, and the Director of the Department of Natural Resources, as soon as it becomes aware of the need to bypass and provide to the [~~Executive Secretary~~]Director the information in R317-8-4.1(13)(d)1.a. through f. to the extent practicable.

3. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass to the [~~Executive Secretary~~]Director as required in R317-8-4.1(12)(f). The permittee shall also immediately notify the Director of the Department of Natural Resources , the public and downstream users and shall implement measures to minimize impacts to public health and the environment to the extent practicable.

(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~~]rules 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~~]Director 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~~]Director 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~~]Director in accordance with R317-8-4.2(6).

(b) POTWs. POTWs shall provide adequate notice to the [~~Executive Secretary~~]Director of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the UPDES [~~regulations~~]rules 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~~]Director 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.

[~~(d) Concentrated animal feeding operations (CAFOs). Any permit issued to a CAFO must include:~~

~~1. Requirements to develop and implement a Comprehensive Nutrient Management Plan (CNMP). At a minimum, a CNMP must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Operations defined as CAFOs before (insert rule effective date here) and permitted prior to December 31, 2006 must have their CNMPs developed and implemented by December 31, 2006. CAFOs that seek to obtain coverage under a permit after December 31, 2006 and all operations defined as CAFOs after (insert rule effective date here) must have a CNMP developed and implemented upon the date of permit coverage. The CNMP must, to the extent applicable:~~

~~a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;~~

~~b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;~~

~~c. Ensure that clean water is diverted, as appropriate, from the production area;~~

~~d. Prevent direct contact of confined animals with waters of the United States;~~

~~e. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;~~

~~f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;~~

~~g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;~~

~~h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater;~~

~~i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described in paragraphs (d)(1)a. through (d)(1)h. of this section; and~~

~~j. Include documentation that the CNMP was prepared or approved by a certified nutrient management planner.~~

~~2. Recordkeeping requirements.~~

~~a. The permittee must create, maintain for five years, and make available to the Director, upon request, the following records:~~

~~(i) All applicable records identified pursuant paragraph (d)(1)i. of this section;~~

~~(ii) In addition, all CAFOs subject to 40 CFR part 412 must comply with record keeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c).~~

~~b. A copy of the CAFO's site-specific CNMP must be maintained on site and made available to the Director upon request.~~

~~3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 CFR part 412. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.~~

~~4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the Director. The annual report must include:~~

~~a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);~~

~~b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);~~

~~c. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/ gallons);~~

~~d. Total number of acres for land application covered by the CNMP developed in accordance with paragraph (d)(1) of this section;~~

~~e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;~~

~~f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and~~

~~g. A statement that the current version of the CAFO's CNMP was developed or approved by a certified nutrient management planner.~~

] 4.2 ESTABLISHING PERMIT CONDITIONS. For the purposes of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in R317-8-5.6. New or reissued permits, and to the extent allowed under R317-8-5.6, modified or revoked and reissued permits shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under R317-8-4.1 each UPDES permit will include conditions on a case by case basis to provide for and ensure compliance with all applicable Utah statutory and regulatory requirements and the following, as applicable:

(1) Technology-based effluent limitations and standards, based on effluent limitations and standards promulgated under Section 19-5-104 of the Utah Water Quality Act or new source performance standards promulgated under Section 19-5-104 of the Utah Water Quality Act, on case-by-case effluent limitations, or a combination of the two in accordance with R317-8-7.1.

(2) Toxic Effluent Standards and Other Effluent Limitations. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is promulgated under Section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the [~~Executive Secretary~~]Director shall institute proceedings under these [~~regulations~~]rules 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~~]Director 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~~]Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal adopted by the State. The [~~Executive Secretary~~]Director 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~~]rules 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]rule 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~~]Director 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~~]Director 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~~]Director 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~~]rule 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~~]Director, 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~~]Director'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 paragraphs (8)(d) and (8)(e) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be a specified in R317-8-1.10(8) (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~~]rules.

(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~~]rules. 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~~]Director 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~~]Director 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~~]rule will be imposed as applicable. Alternatively, the [~~Executive Secretary~~]Director 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~~]Director'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~~]Director 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~~]Director 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~~]Director 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~~]Director must include those elements as conditions in the permit. A qualifying State or local erosion and sediment control program is one that includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

3. Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions of

appropriate control measures, copies of approved State, local requirements, maintenance procedures, inspections procedures, and identification of non-storm water discharges); and

4. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(b) For storm water discharges from construction activity identified in R317-8-3.9(6)(d)10., the [~~Executive Secretary~~]Director 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 judgment of the permit writer.

4.3 CALCULATING UPDES PERMIT CONDITIONS. The following provisions will be used to calculate terms and conditions of the UPDES permit.

(1) Outfalls and Discharge Points. All permit effluent limitations, standards, and prohibitions will be established for each outfall or discharge point of the permitted facility, except as otherwise provided under R317-8-4.2(10) with BMPs where limitations are infeasible; and under R317-8-4.3(8), limitations on internal waste streams.

(2) Production-Based Limitations.

(a) In the case of POTWs, permit effluent limitations, standards, or prohibitions will be calculated based on design flow.

(b) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production, or other measure of operation, will be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production will correspond to the time period of the calculated permit limitations; for example, monthly production will be used to calculate average monthly discharge limitations. The [~~Executive Secretary~~]Director may include a condition establishing alternate permit standards or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(c) For the automotive manufacturing industry only, the [~~Executive Secretary~~]Director may establish a condition under R317-8-4.3(2)(b)2 if the applicant satisfactorily demonstrates to the [~~Executive Secretary~~]Director at the time the application is submitted that its actual production, as indicated in R317-8-4.3(2)(b)1, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(d) If the [~~Executive Secretary~~]Director establishes permit conditions under and R317-8-4.3(2)(c):

1. The permit shall require the permittee to notify the [~~Executive Secretary~~]Director at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

2. The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the [~~Executive Secretary~~]Director under R317-8-4.3(2)(d)1, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

3. The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal will be expressed in terms of the total recoverable metal, that is, the sum of the dissolved and suspended fractions of the metal, unless:

(a) An applicable effluent standard or limitation has been promulgated by EPA and specifies the limitation for the metal in the dissolved or valent form; or total form; or

(b) In establishing permit limitations on a case-by-case basis under R317-8-7, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Utah Water Quality Act; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form.

(4) Continuous Discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable will be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Non-continuous Discharges. Discharges which are not continuous, as defined in R317-8-1.5(7), shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency; for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass; for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge for example, not to exceed 2 kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure, (for example, shall not contain at any time more than 0.05 mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge).

(6) Mass Limitations.

(a) All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If, in establishing permit limitations on a case-by-case basis under R317-8-7.1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation; (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit will require the permittee to comply with both limitations.

(7) Pollutants in Intake Water.

(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in effluent guidelines and standards provide that they shall be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or used to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The [~~Executive Secretary~~]Director may waive this requirement if he finds that no environmental degradation will result.

(e) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(8) Internal Waste Streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by R317-8-4.2(8) shall also be applied to the internal waste streams.

(b) Limits on internal waste streams will be imposed only when the fact sheet under R317-8-6.4 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under 10 meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) Disposal of Pollutants Into Wells, Into POTWs, or by Land Application. Permit limitations and standards shall be calculated as provided in R317-8-2.6.

(10) Secondary Treatment Information. Permit conditions that involve secondary treatment will be written as provided in 40 CFR Part 133, except that Utah effluent limits for secondary treatment will be used.

R317-8-5. Permit Provisions.

5.1 DURATION OF PERMITS

(1) UPDES permits shall be effective for a fixed term not to exceed 5 years.

(2) Except as provided in R317-8-3.1(4) (d), the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(3) The [~~Executive Secretary~~]Director may issue any permit for a duration that is less than the full allowable term under this section.

(4) A permit that would expire on or after the Federal statutory deadline set forth in section 301(b)(2) (A), (C), and (E) of the CWA, may be issued to expire after the deadline if the permit includes effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

(5) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

5.2 SCHEDULES OF COMPLIANCE

(1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Utah Water Quality Act, as amended, and [~~regulations~~]rules 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~~]Director 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~~]Director 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~~]Director, such as a resolution of the Board of Directors of a corporation.

5.3 REQUIREMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS. All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in R317-8-4.1 and 4.2. Reporting shall be no less frequent than specified in the above section.

5.4 EFFECT OF A PERMIT

(1) Except for any toxic effluent standards and prohibitions included in R317-8-4.1(1)(b) and any standards adopted by the State for sewage sludge use or disposal, compliance with a UPDES permit during its term constitutes compliance, for purposes of enforcement, with the UPDES program. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R317-8-5.6 and 5.7.

(2) The issuance of a permit does not convey any property rights or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(4) Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage use or disposal under the UPDES program.

5.5 TRANSFER OF PERMITS

(1) Transfers by Modification. Except as provided in R317-8-5.5(2) a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under R317-8-5.6 or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the UPDES [~~regulations~~]rules.

(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~~]Director 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~~]Director does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under R317-8-5.6(3). If this notice is not received, the transfer is effective on the date specified in the agreement under R317-8-5.5(2)(b).

5.6 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMIT

The [~~Executive Secretary~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]rules on which the permit was based have been changed by promulgation of amended standards or [~~regulations~~]rules 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~~]rules, 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~~]Director'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~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director determines that modification or revocation and reissuance is appropriate.

(b) The [~~Executive Secretary~~]Director 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~~]Director 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~~]Director 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~~];Director

(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

(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~~]Director will follow the applicable procedures of R317-8-6.2 in terminating UPDES permits under this section.

R317-8-6. Review Procedures.

6.1 REVIEW OF THE APPLICATION

(1) Any person who requires a permit under the UPDES program shall complete, sign and submit to the [~~Executive Secretary~~]Director 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~~]Director at such time as the [~~Executive Secretary~~]Director indicates in R317-8-6.3)

(2) The [~~Executive Secretary~~]Director 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; or for concentrated animal feeding operations, as required by R317-8-10.

(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~~]Director 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~~]Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the [~~Executive Secretary~~]Director 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~~]Director shall specify in the notice of deficiency a date for submitting the necessary information. The [~~Executive Secretary~~]Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the [~~Executive Secretary~~]Director 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~~]rules promulgated pursuant thereto.

(6) If the [~~Executive Secretary~~]Director 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~~]Director 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~~]Director

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~~]Director 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

6.2 REVIEW PROCEDURES FOR PERMIT MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS

(1) Permits may only be modified, revoked and reissued, or terminated for the reasons specified in R317-8-5.6. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the [~~Executive Secretary's~~]Director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the [~~Executive Secretary~~]Director 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 adjudicatory proceeding.

(3) If the [~~Executive Secretary~~]Director 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~~]Director 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~~]Director 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~~]Director tentatively decides to terminate a permit under R317-8-5.7, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under R317-8-6.3.

6.3 DRAFT PERMITS

(1) Once an application is complete, the [~~Executive Secretary~~]Director shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the [~~Executive Secretary~~]Director 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~~]Director'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~~]Director 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~~]Director 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~~]Director will give notice of opportunity for a public hearing, issue a final decision and respond to comments.[~~A request for an adjudicatory proceeding may be made pursuant to R317-9 following the issuance of a final decision.~~]

(6) Statement of Basis. A statement of basis shall be prepared for every draft permit for which a fact sheet is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

6.4 FACT SHEETS

(1) A fact sheet shall be prepared for every draft permit for a major UPDES facility or activity, for every UPDES general permit, for every UPDES draft permit that incorporates a variance or requires an explanation under R317-8-6.4(4), for every Class I Sludge Management Facility, for every draft permit that includes a sewage sludge land application plan and for every draft permit which the [~~Executive Secretary~~]Director 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~~]Director 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 public 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~~]Director's decision on regulation of users under R317-8-4.2(12).

(5) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

(6) For permits that include a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit.

(7) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

6.5 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD

(1) Scope.

(a) The [~~Executive Secretary~~]Director 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 public 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~~]Director 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~~]Director 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~~]Director 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 public hearing that will be held, including a statement of procedures to request a public 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 public hearings. In addition to the general public notice described in .5(4) the public notice for a permit hearing under R317-8-6.7 will contain the following information:

1. Reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing;

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under R317-8-2.3(4). In addition to the information required under R317-8-6.5(4)(a) public notice of a UPDES draft permit for a discharge when a R317-8-2.3(4) request has been filed will include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under R317-8-4.2(1) and a brief description, including a quantitative statement of the thermal effluent limitations; and

2. A statement that a R317-8-2.3(4) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

3. If the applicant has filed an early screening request under R317-8-7.4(4) for a variance, a statement that the applicant has submitted such a plan.

(5) In addition to the general public notice described in .5(4) all persons identified in .5(3)(a)1-4 will be mailed a copy of the fact sheet, the permit application and the draft permit.

6.6 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS

During the public comment period provided under R317-8-6.5, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and shall be answered as provided in R317-8-6.12.

6.7 PUBLIC HEARINGS

(1) The [~~Executive Secretary~~]Director 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~~]Director also may hold a public hearing at his or her discretion whenever a hearing might clarify one or more issues involved in the permit decision.

(2) Public notice of the hearing will be given as specified in R317-8-6.5.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R317-8-6.5 will automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

6.8 OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION DURING THE PUBLIC COMMENT PERIOD

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the [~~Executive Secretary's~~]Director'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~~]Director'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~~]Director. 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 agency action under R317-9.~~]

6.9 CONDITIONS REQUESTED BY THE CORPS OF ENGINEERS AND OTHER GOVERNMENT AGENCIES

(1) If, during the comment period for a UPDES draft permit, the District Engineer of the Corps of Engineers advises the [~~Executive Secretary~~]Director 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~~]Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of

anchorage or navigation, then the [~~Executive Secretary~~]Director 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~~]rule. 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~~]Director 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~~]Director 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~~]Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis or fact sheet, or the draft permit.

6.10 REOPENING OF THE PUBLIC COMMENT PERIOD

(1) The [~~Executive Secretary~~]Director 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~~]Director'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~~]Director. 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~~]Director.

(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~~]Director 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~~]Director 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~~]Director 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

After the close of the public comment period under R317-8-6.5, the [~~Executive Secretary~~]Director will issue a final permit decision. The [~~Executive Secretary~~]Director 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 contesting 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.

6.12 RESPONSE TO COMMENTS

(1) At the time that any final permit decision is issued under R317-8-6.11, the [~~Executive Secretary~~]Director 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~~]rule.

(c) The response to the comments shall be available to the public.

R317-8-7. Criteria and Standards.

7.1 CRITERIA AND STANDARDS FOR TECHNOLOGY-BASED TREATMENT REQUIREMENTS

(1) Purpose and scope. This section establishes criteria and standards for the imposition of technology-based treatment requirements and represents the minimum level of control that must be imposed in a UPDES permit. Permits will contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:

(a) For POTW's effluent limitations based upon:

1. Utah secondary treatment from date of permit issuance; and

2. The best practicable waste treatment technology from date of permit issuance.

(b) For dischargers other than POTWs, except as otherwise provided, effluent limitations requiring:

1. The best practicable control technology currently available (BPT) --

a. For effluent limitations promulgated after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case basis based on Best Professional Judgment (BPJ) in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than May 31, 1989;

c. For all other BPT effluent limitations compliance is required from the date of permit issuance.

2. For conventional pollutants the best conventional pollutant control technology (BCT) --

a. For effluent limitations promulgated under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case (BPJ) basis in a permit issued after February 4, 1987 compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989;

c. For all other BCT effluent limitations compliance is required from the date of permit issuance.

3. For all toxic pollutants referred to in Committee Print No. 95-30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT) --

a. For effluent limitations established under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For permits issued on a case-by-case (BPJ) basis after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under Section 304(b)of the CWA and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

4. For all toxic pollutants other than those listed on Committee Print No. 95-30, effluent limitations based on BAT --

a. For effluent limitations promulgated under Section 304(b) of the CWA, compliance is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

5. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT --

a. For effluent limitations promulgated under section 304(b), compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations compliance is required as expeditiously as practicable but in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

(2) Variances and Extensions.

(a) The following variance from technology-based treatment requirements may be applied for under R317-8-2 for dischargers other than POTWs:

1. Economic variance from BAT, as indicated in R317-8-2.3(2);

2. Section 301(g) water quality related variance from BAT;

3. Thermal variance from BPT, BCT and BAT, under R317-8-7.4. may be authorized.

(b) An extension of the BPT deadline may be applied for under R317-8-2.3(3) for dischargers other than POTW's, for use of innovative technology. Compliance extensions may not extend beyond July 1, 1987.

(3) Methods of imposing technology-based treatment requirements in permits. Technology-based treatment requirements may be imposed through one of the following three methods:

(a) Application of EPA-promulgated effluent limitations to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been withdrawn by EPA or remanded. In the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variance from these effluent limitations under R317-8-2.3(1) and R317-8-7.3;

(b) On a case-by-case basis to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors and shall consider:

1. The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information.

2. Any unique factors relating to the applicant.

(c) Through a combination of the methods in paragraphs (a) and (b) of this section. Where EPA promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutant, other aspects or activities are subject to regulation on case-by-case basis in order to carry out the provisions of the CWA;

(d) Limitations developed under paragraph (c)2 of this section may be expressed, where appropriate, in terms of toxicity provided it is shown that the limits reflect the appropriate requirements of the act;

(e) In setting case-by-case limitations pursuant to R317-8-7.1(3), the permit writer must consider the following factors:

1. For BPT requirements:

a. The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

b. The age of equipment and facilities involved;

c. The process employed;

d. The engineering aspects of the application of various types of control techniques;

e. Process changes; and

f. Non-water quality environmental impact (including energy requirements).

2. For BCT requirements:

a. The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

b. The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

c. The age of equipment and facilities involved;

d. The process employed;

e. The engineering aspects of the application of various types of control techniques;

f. Process changes; and

g. Non-water quality environmental impact (including energy requirements).

3. For BAT requirement:

a. The age of equipment and facilities involved;

b. The process employed;

c. The engineering aspects of the application of various types of control techniques;

d. The cost of achieving such effluent reduction; and

e. Non-water quality environmental impact (including energy requirements).

(f) Technology-based treatment requirements are applied prior to or at the point of discharge.

(4) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(a) The technology based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(b) The discharger agrees to waive any opportunity to request a variance under R317-8-2.3;

(c) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(5) Technology-based effluent limitations will be established for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(6)(a) The [~~Executive Secretary~~]Director 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~~]Director 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~~]Director may not set more stringent limits under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substances) controlled by the limit were limited directly.

(d) Toxic pollutants identified under R317-8-7.1(6) remain subject to R317-8-4.1(15) which requires notification of increased discharges of toxic pollutants above levels reported in the application form.

7.2 CRITERIA FOR ISSUANCE OF PERMITS TO AQUACULTURE PROJECTS

(1) Purpose and scope.

(a) This section establishes guidelines for approval of any discharge of pollutants associated with an aquaculture project.

(b) This section authorizes, on a selective basis, controlled discharges which would otherwise be unlawful under the Utah Water Quality Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially.

(c) Permits issued for discharges into aquaculture projects under this section are UPDES permits and are subject to all applicable requirements. Any permit will include such conditions, including monitoring and reporting requirements, as are necessary to comply with the UPDES [~~regulations~~]rules. 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~~]Director 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~~]Director, 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~~]Director, 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~~]Director determines that the crop will not have significant potential for human health hazards resulting from its consumption;

5. The [~~Executive Secretary~~]Director determines that migration of pollutants from the designated project area to waters of the State outside of the aquaculture project will not cause or contribute to a violation of the water quality or applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit will be issued for any aquaculture project in conflict with a water quality management plan or an amendment to a 208 plan approved by EPA.

(c) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.

(d) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

7.3 CRITERIA AND STANDARDS FOR DETERMINING FUNDAMENTALLY DIFFERENT FACTORS

(1) Purpose and scope.

(a) This section establishes the criteria and standards to be used in determining whether effluent limitations required by effluent limitations guidelines hereinafter referred to as "national limits", should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This section applies to all national limits promulgated except for best practicable treatment (BPT) standards for stream electric plants.

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(g) of the Clean Water Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under R317-8-2.3(1). In addition, such a variance may be proposed by the [~~Executive Secretary~~]Director 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~~]rules 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~~]rule shall be submitted in duplicate to the [~~Executive Secretary~~]Director 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~~]rules.

2. The alternative limitations requested are justified by the fundamental difference alleged in subparagraph 1 of this subsection; and

3. The appropriate requirements of subsection 2 of this section have been met.

7.4 CRITERIA FOR DETERMINING ALTERNATIVE EFFLUENT LIMITATIONS

(1) Purpose and scope. The factors, criteria and standards for the establishment of alternative thermal effluent limitations will be used in UPDES permits and will be referred to as R317-8-2.3(4) variances.

(2) Definitions. For the purpose of this section:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under R317-8-2.3(4).

(b) "Representative important species" means species which are representative of a balanced, indigenous community of shellfish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with R317-8-4.1(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~~]Director 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~~]Director 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~~]Director'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~~]Director 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~~]Director 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~~]Director requests within sixty (60) days after receipt of the permit application.

(d) The [~~Executive Secretary~~]Director 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~~]Director.

(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~~]Director 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~~]Director 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~~]Director 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

(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~~]Director 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~~]rules 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~~]Director 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~~]Director for approval. If the [~~Executive Secretary~~]Director approves the proposed BMP program modification, the permit shall be modified in accordance with R317-8-5.6, provided that the [~~Executive Secretary~~]Director may waive the requirements for public notice and opportunity for public 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~~]Director 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~~]Director 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. References throughout the UPDES [~~regulations~~]rules 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

(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~~]Director, 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~~]Director 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~~]Director 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~~]Director 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 judgment, the best information available. The [~~Executive Secretary~~]Director 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~~]Director 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.

R317-8-8. Pretreatment.

8.1 APPLICABILITY

(1) This section applies to the following:

(a) Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;

(b) POTWs which receive wastewater from sources subject to National Pretreatment Standards; and

(c) Any new or existing source subject to National Pretreatment Standards.

(2) National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW.

8.2 DEFINITIONS. The following definitions pertain to indirect dischargers and POTWs subject to pretreatment standards and the UPDES program.

(1) "Approval Authority" means the [~~Executive Secretary~~]Director.

(2) "Approved POTW pretreatment program or Program or 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~~]Director in accordance with R317-8-8.10.

(3) "Best Management Practices or BMPs" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to implement the prohibitions listed in R317-8-8.5(1) and (3). BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw materials storage.

(4) "Control Authority" means the POTW if the POTW's submission for its pretreatment program has been approved by the [~~Executive Secretary~~]Director in accordance with the requirements in R317-8-8.10 or the [~~Executive Secretary~~]Director if the submission has not been approved.

(5) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated by the UPDES program.

(6) "Industrial User" or "User" means a source of indirect discharge.

(7) "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.

(8) "National Pretreatment Standard, Pretreatment Standard or 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.

(9) "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 (CWA) 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.

(10) "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).

(11) "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.

(12) "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).

(13) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

(14) 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.

(15) "Significant Industrial User"

(a) Except as provided in R317-8-8.2(16)(b) and (c), 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 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) The Control Authority may determine that an Industrial User subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

1. The Industrial User, prior to the Control Authority's finding, has consistently complied with all applicable Categorical Pretreatment Standards and Requirements;

2. The Industrial User annually submits the certification statement required in R317-8-8.11(14) together with any additional information necessary to support the certification statement; and

3. The Industrial User never discharges any untreated concentrated wastewater.

(c) Upon a finding that an Industrial User meeting the criteria in R317-8-8.2(15)(a)2. of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from an Industrial User or POTW, and in accordance with R317-8-8.8(6)(b)12. , determine that such Industrial User is not a Significant Industrial User.

(16) "Submission" means

(a) a request by a POTW for approval of a pretreatment program to the [~~Executive Secretary~~]Director 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. 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. 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~~]Director.

8.5 NATIONAL PRETREATMENT STANDARDS: Prohibited Discharges

(1) General Prohibitions. Pollutants introduced into POTWs by a non-domestic source shall not pass through the POTW or interfere with the operation or performance of the works. These general prohibitions and the specific prohibitions in R317-8-8.5(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)1. 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

2. 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~~]Director, upon request of the POTW, approves alternate temperature limits.

(f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; and

(h) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(4) When specific limits must be developed by POTW.

(a) POTWs developing POTW pretreatment programs shall develop and enforce specific limits to implement the prohibitions listed in R317-8-8.5(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~~]Director 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~~]Director may take appropriate enforcement action.

(7) POTWs may develop Best Management Practices (BMPs) to implement R317-8-8.5(4)(a) and (b). Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this part and section 307(d) of the CWA

8.6 NATIONAL PRETREATMENT STANDARDS: Categorical Standards

40 CFR 403.6 is incorporated by reference as indicated in R317-8-1.10(4)

(1) In addition to the general prohibitions in R317-8-8.5(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~~]Director to provide written certification on whether an Industrial User falls within a particular subcategory. The [~~Executive Secretary~~]Director 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. 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: 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~~]Director exercises the option to assume local responsibility as provided for in R317-8-8.8(6)(b)13. The [~~Executive Secretary~~]Director 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~~]Director 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~~]Director 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(15), 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. At the discretion of the POTW:

i. This control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

A. Involve the same or substantially similar types of operations;

B. Discharge the same types of wastes;

C. Require the same effluent limitations;

D. Require the same or similar monitoring; and

E. In the opinion of the POTW, are more appropriately controlled under a general control mechanism than under individual control mechanisms.

ii. To be covered by the general control mechanism, the Significant Industrial User must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with R317-8-8.11(4)(b) for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the POTW has provided written notice to the Significant Industrial User that such a waiver request has been granted in accordance with R317-8-8.11(4)(b). The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific Significant Industrial User meets the criteria in R317-8-8.8(6)(a)3.a.i.A. through E., and a copy of the User's written request for coverage for 3 years after the expiration of the general control mechanism. A POTW may not control a Significant Industrial User through a general control mechanism where the facility is subject to production-based Categorical Pretreatment Standards or Categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for Industrial Users whose limits are based on the combined wastestream formula or Net/Gross calculations (40 CFR 403.6(e) and 40 CFR 403.15).

b. Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:

i. Statement of duration (in no case more than five years);

ii. 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;

iii. Effluent limits, including Best Management Practices, based on applicable general pretreatment standards, Categorical Pretreatment Standards, local limits and State and local law;

iv. Self-monitoring, sampling, reporting, notification and record keeping requirements, including identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with R317-8-8.11(4)(b), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards, Categorical Pretreatment Standards, local limits, and State and local law;

v. 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; and

vi. Requirements to control Slug Discharges, if determined by the POTW to be necessary.

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 any Industrial User 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 R317-8-8.16 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~~]Director 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~~]Director 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~~]Director upon request;

2. Identify the character and volume of pollutants contributed to the POTW by the Industrial User identified under R317-8-8.8(6)(b)1. This information shall be made available to the [~~Executive Secretary~~]Director upon request;

3. Notify Industrial Users identified under R317-8-8.8(6)(b)1. 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 except as otherwise specified below:

a. Where the POTW has authorized the Industrial User subject to a Categorical Pretreatment Standard to forego sampling of a pollutant regulated by a Categorical Pretreatment Standard in accordance with R317-8-8.11(4)(c), the POTW must sample for the waived pollutant(s) at least once during the term of the Categorical Industrial User's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the Industrial User's wastewater based on changes that occur in the User's operations, the POTW must immediately begin at least annual effluent monitoring of the User's Discharge and inspection.

b. Where the POTW has determined that an Industrial User meets the criteria for classification as a Non-Significant Categorical Industrial User, the POTW must evaluate, at least once per year, whether an Industrial User continues to meet the criteria in R317-8-8.2(15)(b),

c. In the case of Industrial Users subject to reduced reporting requirements under R317-8-8.11(4)(c), the POTW must randomly sample and analyze the effluent from Industrial Users and conduct inspections at least once every two years. If the Industrial User no longer meets the conditions for reduced reporting in R317-8-8.11(4)(c), the POTW must immediately begin sampling and inspecting the Industrial User at least once a year.

6. 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, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits or Permit conditions. The results of such activities shall be available to the [~~Executive Secretary~~]Director upon request. Significant Industrial Users are required to notify the POTW immediately of any changes at its facility affecting potential for a slug discharge. Significant Industrial Users must be evaluated within one year of being designated a Significant Industrial User. 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~~]Director upon request;

7. 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;

8. 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) a numeric Pretreatment Standard or Requirement including instantaneous limits, 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 numeric Pretreatment Standard or Requirement including instantaneous 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 45 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 may include a violation of Best Management Practices, which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

9. 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~~]Director 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.

10. Local Limits. The POTW shall develop local limits as required in section R317-8-8.5(4)(a) or demonstrate that they are not necessary.

11. 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 R317-8-8.8(6)(a) and (b).

12. List of Industrial Users. The POTW shall prepare a list of its Industrial Users meeting the criteria of R317-8-8.2(15)(a). The list shall identify the criteria in R317-8-8.2(15)(a) applicable to each Industrial User and, for Industrial Users meeting the criteria in

R317-8-8.2(15)(a), shall also indicate whether the POTW has made a determination pursuant to R317-8-8.2(15)(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~~]Director as a nonsubstantial program modification. Discretionary designations or de-designations by the Control Authority shall be deemed to be approved by the [~~Executive Secretary~~]Director 90 days after submission of the list or modifications thereto, unless the [~~Executive Secretary~~]Director determines that a modification is in fact a substantial modification.

13. 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.

(7) A POTW that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 - (Electronic reporting).

8.9 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~~]Director, 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~~]Director 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(d).

(5) Approval Authority Action. A POTW requesting POTW pretreatment program approval shall submit to the [~~Executive Secretary~~]Director three copies of the submission described in R317-8-8.9(2), and if appropriate R317-8-8.9(4). Within 60 days after receiving a submission, the [~~Executive Secretary~~]Director 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~~]Director 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~~]Director determines that the submission does not comply with the requirements of R317-8-8.9(2), (3) and, if appropriate, (4), the [~~Executive Secretary~~]Director 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~~]Director 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~~]Director 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. 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~~]Director 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 40 CFR 403.7(e) and R317-8-8.9(4) to review the submission. The [~~Executive Secretary~~]Director 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 R317-8-8.7. The [~~Executive Secretary~~]Director 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)(a)2. is extended beyond thirty (30) days or if a public hearing is held as provided for in R317-8-8.10(2)(b). 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 meeting the requirements of R317-8-8.9(2) and, in the case of a removal credit application 403.7(e) and R317-8-8.9(2).

(2) Public Notice and Opportunity for Public Hearing. Upon receipt of a submission the [~~Executive Secretary~~]Director 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 40 CFR 403.7(d) and R317-8-8.7 the [~~Executive Secretary~~]Director 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 (unless such agencies have asked not to be sent the notices); 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~~]Director 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~~]Director.

(b) The [~~Executive Secretary~~]Director 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~~]Director will hold a public 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 public 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~~]Director 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~~]Director 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~~]Director will so notify the POTW and each person who has requested individual notice. If the Approval Authority makes a determination to deny the request, the Approval Authority shall so notify the POTW and each person who has requested individual notice. This notification will include suggested modification and the [~~Executive Secretary~~]Director may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(4) EPA Objection to [~~Executive Secretary's~~]Director's Decision. No POTW pretreatment program or authorization to grant removal allowances will be approved by the [~~Executive Secretary~~]Director 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~~]Director 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~~]Director 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~~]Director 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~~]Director will ensure that the submission and any comments on the submission are available to the public for inspection and copying.

8.11 REPORTING REQUIREMENTS FOR POTWS AND INDUSTRIAL USERS

(1) 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 Standards 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~~]Director, 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 Standards, shall be required to submit to the Control Authority a report which contains the information listed in R317-8-8.11(1)(a)through (e). 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(1)(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 standard or the Control Authority. Both daily maximum and average concentration or mass, where required shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable standards to determine compliance with the Standard;

3. 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.

4. 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.

5. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. 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.

6. 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.

7. 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 Industrial 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 Standards 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(1), the information required by R317-8-8.11(1)(f) and (g) shall pertain to the modified limits.

2. If the Categorical Pretreatment Standards 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 40 CFR 403.13 after the User submits the report required by R317-8-8.11(1), any necessary amendments to the information requested by R317-8-8.11(1)(f) and (g) shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.

(2) Compliance Schedule for Meeting Categorical Pretreatment Standards. The following conditions shall apply to the schedule required by R317-8-8.11(1)(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 e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);

(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;

(3) 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(1)(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.

(4) Periodic Reports on Continued Compliance.

(a) Any Industrial User subject to a Categorical Pretreatment Standards (except a Non-Significant Categorical User as defined in R317-8-8.2(15)(b) 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~~]Director, 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(1)(d) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted.

(b) The Control Authority may authorize the Industrial User subject to a Categorical Pretreatment Standard to forego sampling of a pollutant regulated by a Categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

1. The Control Authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable Categorical Standard and other wise includes no process wastewater.

2. The monitoring waiver is valid only for the duration of the effective period of the Permit or other equivalent individual control mechanism, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.

3. In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

The request for a monitoring waiver must be signed in accordance with paragraph (11) of this section and include the certification statement in 40 CFR 403.6(a)(2)ii. Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

4. Any grant of the monitoring waiver by the Control Authority must be included as a condition in the User's Control mechanism. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Control Authority for 3 years after expiration of the waiver.

5. Upon approval of the monitoring waiver and revision of the User's control mechanism by the Control Authority, the Industrial User must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR ..... (specify applicable National Pretreatment Standard part(s)), I certify that, to the best of my knowledge and belief, there has been no increase in the level of ..... (list pollutant(s)) in the wastewaters due to the activities at the facility since filing of the last periodic report under R317-8-8.11(4)(a)."

6. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the User's operations, the User must immediately: Comply with the monitoring requirements of paragraph (4)(a) of this section or other more frequent monitoring requirements imposed by the Control Authority; and notify the Control Authority.

7. This provision does not supersede certification processes and requirements established in Categorical Pretreatment Standards, except as otherwise specified in the Categorical Pretreatment Standard.

(c) The Control Authority may reduce the requirement in paragraph (4)(a) of this section to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the Approval Authority, where the Industrial User meets all of the following conditions:

1. The Industrial User's total categorical wastewater flow does not exceed any of the following:

a. 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the Industrial User discharges in batches;

b. 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

c. 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable Categorical Pretreatment Standard for which approved local limits were developed by a POTW in accordance with R317-8-8.5(4) and paragraph (3) of this section;

2. The Industrial User has not been in significant noncompliance, as defined in R317-8-8.8(6)(b)8. for any time in the past two years;

3. The Industrial User does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period pursuant to paragraph (6)(c) of this section;

4. The Industrial User must notify the Control Authority immediately of any changes at its facility causing it to no longer meet conditions of paragraph (4)(c)1. or 2. of this section. Upon notification, the Industrial User must immediately begin complying with the minimum reporting in paragraph (4)(a) of this section; and

5. The Control Authority must retain documentation to support the Control Authority's determination that a specific Industrial User qualifies for reduced reporting requirements under paragraph (4)(c) of this section for a period of 3 years after the expiration of the term of the control mechanism.

(d) 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(4)(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(4)(a) shall include the User's actual average production rate for the reporting period.

(5) 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.

(6) Monitoring and Analysis to Demonstrate Continued Compliance.

(a) Except in the case of Non-Significant Categorical User, the reports required in R317-8-8.11(1), (3), (4) and (8) 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. Where the Control Authority has performed the sampling and analysis in lieu of the Industrial User , the Control Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required 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 initial sampling was conducted and the time when the User or the Control Authority 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. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.

(d) For sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics compounds for facilities which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by paragraphs (4) and (8) of this section, the Control Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

(e) 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.

(f) If an Industrial User subject to the reporting requirement in R317-8-8.11(4) or (8) monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in, R317-8-8.11(6)(e), the results of this monitoring shall be included in the report.

(7) 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~~]Director 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~~]Director.

(8) 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. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. 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 and amendments thereto. Where 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or where the [~~Executive Secretary~~]Director 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.

(9) Annual POTW reports. POTWs with approved pretreatment programs shall provide the [~~Executive Secretary~~]Director with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one 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. The list must also identify Industrial Users subject to Categorical Pretreatment Standards that are subject to reduced reporting requirements under paragraph (4)(c), and identify which Industrial Users are Non-Significant Categorical Industrial Users.

(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;

(d) A summary of changes to the POTW's pretreatment program that have not been previously reported to the Approval Authority; and

(e) Any other relevant information requested by the [~~Executive Secretary~~]Director.

(10) 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 R317-8-8.11(14)(d).

(11) Signatory Requirements for Industrial User Reports. The reports required by R317-8-8.11(1), (3) and (4) shall include the certification statement as set forth in 40 CFR and 403.6(a)(2)(ii) 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:

1. 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

2. The manager of one or more manufacturing, production, or operation facilities provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where 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.

(12) Signatory Requirements for POTW Reports. Reports submitted to the [~~Executive Secretary~~]Director by the POTW in accordance with R317-8-8.11(7) and (9) shall be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the Pretreatment Program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the Approval Authority prior to or together with the report being submitted.

(13) Provisions Governing Fraud and False Statements. The reports and other documents required to be submitted or maintained by R317-8-8.11(1), (3), (4), (7), (8), (11) and (12) shall be subject to the Utah Water Quality Act as amended and all other State and Federal laws pertaining to fraud and false statements.

(14) 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, including documentation associated with Best Management Practices. 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 in this section (including documentation associated with Best Management Practices 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~~]Director, 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~~]Director.

(c) A POTW to which reports are submitted by an Industrial User pursuant to R317-8-8.11 shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the [~~Executive Secretary~~]Director. 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~~]Director.

(d) Notification to POTW by Industrial User.

1. The Industrial User shall notify the [~~Executive Secretary~~]Director, 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. Such notification must include the name of the hazardous waste as set forth in R315-2, 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(10). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of R317-8-8.11(1), (3), and (4).

2. Dischargers are exempt from the requirements of R317-8-8.11(14)(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. 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, 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 R317-8-8.11(14)(d), 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.

(15) Annual certification by Non-Significant Categorical Industrial Users. A facility determined to be a Non-Significant Categorical Industrial User pursuant to R317-8-8.2(15)(b) must annually submit the following certification statement, signed in accordance with the signatory requirements in paragraph (11) of this section. This certification must accompany any alternative report required by the Control Authority:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the Categorical Pretreatment Standards under 40 CFR (state section), I certify that, to the best of my knowledge and belief that during the period from (include start of reporting date) to (include end of reporting date):

The facility described as (include facility name) met the definition of a Non-Significant Categorical Industrial User as described in R317-8-8.2(15)(b), the facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period." This compliance certification is based upon the following information: (include information required by the control mechanism)

(15) The Control Authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 - (Electronic reporting).

8.12 CONFIDENTIALITY OF INFORMATION. Any information submitted to the [~~Executive Secretary~~]Director pursuant to these [~~regulations~~]rules 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~~]Director 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~~]Director 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. 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) are met.

(2) Criteria

(a) Either:

1. The applicable Categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis, or

2. 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.

8.14 UPSET PROVISION

(1) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of R317-8-8.14(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

(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 POTW PRETREATMENT PROGRAMS

(1) General. Either the [~~Executive Secretary~~]Director 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~~]Director a statement of the basis for the desired modification, a modified program description or such other documents the [~~Executive Secretary~~]Director determines to be necessary under the circumstances.

2. The [~~Executive Secretary~~]Director shall approve or disapprove the modification based on its regulatory requirements of R317-8-8.8(6) and using the procedures in R317-10(2) through (6), except as provided in paragraphs (2)4. of this section. The modification shall become effective upon approval by the [~~Executive Secretary~~]Director.

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 Approval Authority need not publish a notice of decision provided: The notice of request for approval states that the

request will be approved if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change.

(b) The POTW shall notify the [~~Executive Secretary~~]Director of any other (i.e. non-substantial) modifications to its pretreatment program at least 45 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~~]Director, unless the [~~Executive Secretary~~]Director 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~~]Director such modifications shall be incorporated in the POTW's permit in accordance with R317-8-5.6(2)(g). If the [~~Executive Secretary~~]Director determines that a modification reported by a POTW is in fact a substantial modification, the [~~Executive Secretary~~]Director 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~~]Director 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.

8.17 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.

40 CFR 403.13 is incorporated into this rule by reference as indicated in R317-8-1.10(6)

R317-8-9. Pesticide Discharge Permit.

9.1 APPLICABILITY.

(1) This section applies to qualified groups of operators who discharge on or near surface waters of the State from the application of (1) biological pesticides or (2) chemical pesticides (hereinafter collectively "pesticides"), when the pesticide application is for one of the following pesticide use patterns:

(a) Mosquito and Other Insect Pests - to control public health/nuisance and other insect pests that may be present on or near standing or flowing surface water. Public health/nuisance and other insect pests in this use category include but are not limited to mosquitoes and black flies.

(b) Weed and Algae Control - to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches and/or irrigation canals.

(c) Aquatic Nuisance Animal Control - to control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks.

(d) Forest Canopy Pest Control - application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to water.

(2) Qualified Operator Groups. Certain types of entities (operators), engaged in the above pesticide use patterns, will be required to submit a NOI and obtain coverage under a Pesticide General Permit (PGP) as detailed below:

Operator Group 1 - All Operators involved with any discharges to Category 1 (R317-2-12) waters of the State. All operators involved in the discharge of pesticides on or near surface waters of State, which have been determined by the Water Quality Board to be Category 1 waters of the State must submit a NOI to obtain coverage under the PGP. The NOI must detail each area and watershed where a discharge is to occur. Only pesticide applications which are made to restore or maintain water quality or to protect public health or the environment would be covered under the PGP for discharges on or near Category 1 surface waters of the State.

Operator Group 2 - All Government or Quasi-Governmental Agencies or Special Service Districts. All government agency operators (federal, state, county or local agencies and special service districts) involved in the discharge of pesticides under the conditions described above, as a primary purpose or as a significant activity in their operations, must submit a NOI describing each area and watershed where a discharge is to occur to obtain PGP coverage regardless of the size of the area to be treated.

Operator Group 3 - Other Operators. Other operators engaged in the discharge of pesticides for the conditions described above as a primary purpose or as a significant activity in their operations, like private pest control companies, water supply or canal companies or other large operators whose discharges exceed the treatment area thresholds detailed in Table 2 below must apply for a NOI to obtain coverage under the PGP as detailed in Table 1 below.

Operator Group 4 - Operators involved in a "Declared Pest Emergency Situation". All operators that otherwise aren't required to obtain a NOI, but become involved in a "declared pest emergency situation", as defined below, and will exceed any of the treatment area thresholds in Table 2 must submit a NOI to obtain PGP coverage as detailed in Table 1 below.

9.2 DEFINITIONS. The following definitions specifically pertain to aspects of pesticide discharge permitting in the UPDES program and should be used in conjunction with the definitions shown in R317-1-1 and R317-8-1.5.

(1) "Biological Pesticides" (also called biopesticides) means microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). Microbial pesticide means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that (a) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (b) is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaebacteria; or (c) is a parasitically replicating microscopic element, including but not limited to, viruses (40 CFR 158.2100(b)).

(2) "Biochemical pesticide" means a pesticide that (a) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (b) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticide, is equivalent to a naturally-occurring substance that has such a history; and (c) Has a non-toxic mode of action to the target pest(s)(40 CFR 158.2000(a)(1)). Plant-incorporated protectant means a pesticidal substance that is intended to be produced and used in a living plant, or in the production thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or production thereof (40 CFR 174.3).

(3) "Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

(4) "Declared Pest Emergency Situation" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control. This public declaration may be based on a; significant risk to human health; significant economic loss; or significant risk to Endangered species, Threatened species, Beneficial organisms, or, the environment.

(5) "NOI" means "Notice of Intent", the formal document submitted by an operator to the Division of Water Quality (DWQ) to request coverage under the Pesticide General Permit.

(6) "Operator" means any entity involved in the application of a pesticide which may result in a discharge to waters of the State that meets either or both of the following two criteria:

(a) The entity has control over the financing for, or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions or;

(b) The entity has day-to-day control of, or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves).

(7) "surface waters of the State" means waterbodies, waterways, streams, lakes or rivers that contain standing or flowing water at the time of pesticide application.

(8) "Treatment Area" means the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits or may have an environmental impact. In some instances, the treatment area will be larger than the area where pesticides are actually applied.

9.3 ADMINISTRATIVE REQUIREMENTS.

(1) All operators who are included in the use patterns specified in R317-8-9.1, and discharge to active surface waters of the State as a result of the application of a pesticide must be covered by a UPDES permit, beginning October 31, 2011, by submitting a NOI to obtain coverage under the Pesticide General Permit (PGP). In the event that a discharge occurs prior to submitting a NOI, you must comply with all other requirements of the PGP immediately. All operators will automatically be covered under the PGP for the first five-year permit term of October 31, 2011 to October 30, 2016 if they submit a NOI by February 15, 2012. To obtain PGP coverage for the second and all succeeding PGP five-year terms, all operators must submit a NOI prior to the expiration date (October 30) of the PGP every five years. Each NOI submission will secure permit coverage for the full five-year term of the PGP.

(2) New, qualified operators, who require PGP coverage after February 15, 2012 must submit a NOI in accordance with Table 1 below. The NOI will secure PGP coverage for the remainder of the five-year term of the PGP in effect at that time. For continued PGP coverage during the next five-year permit cycle, a new NOI must be submitted before the expiration of the present PGP, as detailed above.

Table 1. Discharge Authorization Date (a/)

Category	NOI Submittal Deadline	Discharge Authorization Date
Operators who know or should have reasonably known, prior to commencement of discharge, that they will exceed an annual treatment area threshold identified in R317-8-9.3 (4).	At least 10 days prior to commencement of discharge	No earlier than 10 days after the complete and accurate NOI is mailed and postmarked.
Operators who do not know or would have reasonably not known until after commencement of discharge, that they will exceed an annual treatment area threshold identified in R317-8-9.3(4).	At least 10 days prior to exceeding an annual treatment area threshold.	Original authorization terminates when annual treatment area threshold is exceeded. Operator is reauthorized no earlier than 10 days after complete and accurate NOI is mailed and postmarked.
Operators commencing discharge in response to a declared pest emergency situation.	No later than 30 days after commencement of discharge.	Immediately, for activities conducted in response to a declared pest emergency situation.

a/ In the event that a discharge occurs prior to your submitting a NOI, you must comply with all other requirements of the PGP immediately.

(3) PGP Coverage Termination. PGP coverage may be terminated by non-submission of a NOI at the end of the present PGP five-year term, or by submission of a signed Notice of Termination (NOT) form to the DWQ.

(4) Annual Treatment Area Thresholds.

Table 2. Annual Treatment Area Thresholds

Rule Section	Pesticide Use Class	Annual Threshold
R317-8-9.1(1)(a)	Mosquitoes and Other Insect Pests	6,400 acres of Treatment Area
R317-8-9.1(1)(b)	Weed and Algae Control -In Water -At Water's Edge	 80 acres of treatment area a/ 100 linear miles of treatment area at water's edge b/
R317-8-9.1(1)(c)	Aquatic Nuisance Animal Control -In Water -At Water's Edge	 80 acres of treatment area a/ 100 linear miles of treatment area at water's edge b/
R317-8-9.1(1)(d)	Forest Canopy Pest Control	6,400 acres of treatment area

a/ Calculations should include the area of the applications made to active surface waters of the State at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a ten acre site should be counted as twenty acres of treatment area.

b/ Calculations should include the linear extent of the application made at water's edge adjacent to active surface waters of the State and at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity and each side of a linear water body as a separate activity or area. For example, treating both sides of a ten mile ditch is equal to twenty miles of water treatment area.

(5) All applicators or operators, whether or not falling into the use categories, or required to obtain PGP coverage, or whether or not meeting the minimum annual treatment area thresholds shown in R317-8-9.3(4) must conform to the Technology Based Effluent limitations in the PGP and to all applicable rules and regulations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The permittee is expected to familiarize himself with the PGP and conform to its requirements, if he discharges any pesticides prior to obtaining a NOI. After February 15, 2012 the permittee is authorized to discharge under the terms and conditions of the PGP only with submission of a completed electronic NOI in accordance with Table 1 above.

(6) Based on a review of the NOI or other information, the DWQ may delay authorization to discharge under the PGP or may determine that additional technology-based and/or water quality-based effluent limitations are necessary; or may deny coverage under this PGP and require submission of an application for an individual UPDES permit in accordance with this rule. If the [~~Executive Secretary~~]Director determines an individual UPDES permit is required, that permitting process will proceed independently.

R317-8-10. Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs).

10.1 Applicability of R317-8, Rule Compatibility, and Federal Rule Incorporation.

(1) This rule R317-8-10, including the federal regulations incorporated by reference in R317-8-10.1(3), shall be applicable to animal feeding operations and concentrated animal feeding operations in Utah as provided in the rule.

(2) Where any requirements, definitions, or conditions in R317-8-10 conflict with the requirements, definitions, or conditions pertaining to animal feeding operations or concentrated animal feeding operations in other parts of R317-8, the requirements, definitions, and conditions in this R317-8-10 shall govern.

(3) Included in the federal regulations incorporated by reference under R317-8-1.10 are the following federal regulations governing concentrated animal feeding operations, effective as of July 30, 2012, which have been incorporated by reference as specified in R317-8-1.10:

(a) 40 CFR 122.21(i);

(b) 40 CFR 122.23(a), (b)(3), (b)(5), (b)(7), (b)(8), (c), (d)(2), (e) and (h);

(c) 40 CFR 122.28(b)(2);

(d) 40 CFR 122.42(e);

(e) 40 CFR 122.62(a)(17);

(f) 40 CFR 122.63(h);

(g) 40 CFR Part 412.

(4) The following substitutions apply to the federal regulations incorporated by reference:

(a) Substitute "Director of the Division of Water Quality" for all federal regulation references to "Director".

(b) Substitute "UPDES" for all federal regulation references to "NPDES".

(c) Substitute the term "surface waters of the state" for all federal regulation references to "surface water", "waters of the United States", "navigable waters", or "U.S. waters."

10.2 Definitions.

"Animal Feeding Operation" (AFO) means a lot or facility (other than aquatic animal production facility) where the following conditions are met:

(a) animals have been, are, or will be stabled, housed, or confined and fed or maintained for a total of forty-five (45) days or more in any 12-month period;

(b) crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility; and

(c) two or more AFOs under common ownership are considered to be a single AFO if they adjoin each other or if they use a common area or system for the storage or disposal of waste.

"Concentrated Animal Feeding Operation" (CAFO) means:

(a) an AFO that is a Large CAFO; or

(b) an AFO that is a Medium CAFO; or

(c) an AFO that is a Small AFO or Medium AFO that is a Designated CAFO.

"Approved Agriculture Environmental Stewardship Program" means a program approved by the Water Quality Board as meeting the substantive standards of this rule and the Utah Water Quality Act, Title 19, Chapter 5.

"Designated CAFO" means an AFO that is designated as a CAFO by the Director according to criteria in 40 CFR 122.23(c) and thereby required to obtain a UPDES permit.

"Discharge" has the same meaning as "Discharge of a Pollutant" in R317-8-1.5 except that, for purposes of this R317-8-10 only, "discharge" shall refer only to the addition of pollutants to surface waters of the state.

"Large CAFO" means an AFO that stables, houses, or confines the type and number of animals that fall within any of these ranges:

(a) Beef, calves, heifers, and/or veal 1,000 or more
(b) Cows (milking and dry) 700 or more
(c) Layers, broilers (wet system) 30,000 or more
(d) Other than layers (dry system) 125,000 or more
(e) Layers (dry system) 82,000 or more
(f) Turkeys 55,000 or more
(g) Swine (55 pounds or more) 2,500 or more
(h) Swine (less than 55 pounds) 10,000 or more
(i) Sheep 10,000 or more
(j) Horses 500 or more
(k) Ducks (dry system) 30,000 or more
(l) Ducks (wet system) 5,000 or more

"Large Weather Event" for purposes of 19-5-105.5(3)(b)(iii) means a single event or a series of precipitation events, including snow, received at an AFO (including a CAFO) during any consecutive thirty day period that:

(a) occurs in a manner that does not allow an AFO or CAFO to appropriately dewater waste storage, treatment or containment structures; and

(b) yields precipitation in an amount greater than the total of:

(i) the area's monthly average precipitation for the period of the precipitation event(s); and

(ii) (A) for a poultry, swine, or veal AFO or CAFO, a 100-year, 24-hour storm event for the area; or

(B) for all other AFOs or CAFOs, a 25-year, 24-hour storm event for the area.

"Medium AFO" means a lot or facility that is an AFO that stables, houses or confines the type and number of animals that fall within any of these ranges:

(a) Beef, calves, heifers, and/or veal 300-999
(b) Cows (milking and dry) 200-699
(c) Layers and/or broilers (wet system) 9,000-29,999
(d) Other than layers (dry system) 37,500-124,999
(e) Layers (dry system) 25,000-81,999
(f) Turkeys 16,500-54,999
(g) Swine (55 pounds or more) 750-2,499
(h) Swine (less than 55 pounds) 3,000-9,999
(i) Sheep 3,000-9,999
(j) Horses 150-499
(k) Ducks (dry system) 10,000-29,999
(l) Ducks (wet system) 1,500-4,999

"Medium CAFO" means an AFO that confines the number of animals to be classified as a Medium AFO, and where the conditions specified in 40 CFR 122.23(b)(6)(ii) are met.

"Reasonable Measures" for purposes of 19-5-105.5(3)(b)(iii) mean the measures described in R317-8-10.9.

"Small AFO" means a lot or facility that is an AFO that stables, houses, or confines the type and number of animals that fall within any of these ranges:

(a) Beef, calves, heifers, and/or veal 1-299
(b) Cows (milking and dry) 1-199
(c) Layers, broilers (wet system) 1-8,999
(d) Other than layers (dry system) 1-37,499
(e) Layers (dry system) 1-24,999
(f) Turkeys 1-16,499
(g) Swine (55 pounds or more) 1-749
(h) Swine (less than 55 pounds) 1-2,999
(i) Sheep 1-2,999
(j) Horses 1-149
(k) Ducks (dry system) 1-9,999
(l) Ducks (wet system) 1-1,499

"Small CAFO" means an AFO that confines the number of animals to be classified as a Small AFO, where the following conditions are met:

(a) (i) the Small AFO discharges through a man-made ditch, flushing system, or other similar man-made device; or

(ii) the Small AFO discharges into surface waters of the state which waters originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined at the operation; and

(b) the Director has designated the Small AFO as a CAFO according to criteria in 40 CFR 122.23(c).

"Surface Waters of the State" for purposes under R317-8-10 means Waters of the State as defined in R317-8-1(60) that are not ground water, except ground water that has hydrologic connection to surface waters of the state.

"Technical Standards" means the standards that nutrient management plans must meet, as described in R317-8-10.6.

10.3 UPDES Permit Requirement and Prohibition on Discharge Without a Permit.

(1) The following animal feeding operations are required to apply for a UPDES permit:

(a) Large CAFOs that discharge;
(b) Medium CAFOs; and
(c) Designated CAFOs.

(2) CAFOs with land application discharges are subject to the requirements provided in 40 CFR 122.23(e) and 40 CFR 122.42(e).

(3) A Small AFO may only be designated as a CAFO if:

(i) Pollutants are discharged from the Small AFO into surface waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

(ii) Pollutants from the Small AFO are discharged directly into surface waters of the state which waters originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(4) No AFO or CAFO shall discharge except as authorized under a current UPDES permit.

10.4 Timing of UPDES Permit Application.

(1) An animal feeding operation that has an operational change that results in a requirement to obtain a UPDES CAFO permit shall submit an application no later than 90 days after the time a facility has conditions that require CAFO permit coverage.

(2) No later than 180 days before the expiration of a permit, or as provided by the Director, a permitted CAFO must submit an application to renew its permit in accordance with 40 CFR 122.21(d) unless the CAFO will not discharge upon expiration of the permit.

(3) For facilities in operation prior to April 14, 2003 that have an operational change where the facility becomes a Large CAFO that discharges, or a Medium or Designated CAFO, must seek to obtain UPDES permit coverage no later than 90 days after the time a facility has conditions that require CAFO permit coverage.

(4) New source CAFOs that require CAFO permit coverage and CAFOs constructed after April 14, 2003 that require CAFO permit coverage must seek to obtain UPDES CAFO permit coverage no later than 180 days prior to the time a facility commences operation with the conditions that require CAFO permit coverage.

(5) A CAFO that is required to obtain an individual permit or that is a Designated CAFO, shall apply for a permit within 60 days of notification of permit requirement by the Director, unless otherwise determined by the Director.

10.5 UPDES CAFO Permit Application Requirements.

In order to apply for a UPDES CAFO permit, an AFO or CAFO shall submit to the Director an application containing the information specified in 40 CFR 122.21(i). Application forms may be obtained from the Division of Water Quality. If the applicant is seeking coverage under a general permit, it shall submit a notice of intent and nutrient management plan to the Director, along with any information required under the general permit. If the Director has not issued a general permit for which the AFO or CAFO is eligible, the owner or operator must submit an application, including a nutrient management plan, for an individual permit to the Director.

10.6 Technical Standards.

(1) The requirements of the Utah Natural Resources Conservation Service (Utah NRCS) Practice Standard 590, Nutrient Management, dated January 2013, are hereby incorporated by reference as the Technical Standards, for purposes of this rule and 40 CFR 412.4(c)(2). Implementation of these standards at a facility requires evaluation on a field-specific basis.

10.7 Nutrient Management Plans.

(1) An AFO or CAFO with a UPDES permit, and as provided in R317-8-10.9, shall have a facility-specific nutrient management plan (NMP). On a field-specific basis, NMPs for permitted facilities shall comply with the requirements and standards specified in:

(a) R317-8-10;

(b) Applicable federal regulations incorporated by reference in R317-8-1.10 and also specified in R317-8-10.1;

(c) The requirements of 40 CFR 122.42(e)(1)(i) through (viii) and the practices and protocols that are required to be identified in those provisions;

(d) Technical Standards in R317-8-10.6; and

(e) nutrient management plan requirements in the UPDES permit.

(2) An NMP for permitted facilities shall be approved by an NRCS certified planner.

10.8 Requirement to Comply with a Permit.

In addition to the requirements of this rule, a UPDES CAFO Permittee shall comply with all permit requirements.

10.9 Reasonable Measures for Large Weather Events.

(1) As provided in 19-5-105.5(3)(b)(iii), no penalty shall apply with respect to an agriculture discharge resulting from a large weather event if the agriculture producer has taken reasonable measures to prevent an agriculture discharge.

(2) An AFO or CAFO will be considered to have taken reasonable measures, for purposes of 19-5-105.5(3)(b)(iii), if it has obtained and is in compliance with a UPDES CAFO permit.

(3) A CAFO that is not required to obtain a UPDES permit and that has experienced an agriculture discharge from its land application areas resulting from a large weather event, will be considered to have taken reasonable measures if:

(a) It has obtained and is in compliance with a site-specific NMP that implements Technical Standards and the requirements of 40 CFR 122.42(e)(1)(vi) through (viii), and the practices and protocols identified under those provisions;

(b) It has kept records adequate to demonstrate that it has met the requirements in paragraph (3), and has provided copies of those records to the Director upon request; and

(c) It has provided one-time notification to the Division that it has implemented reasonable measures under this part 10.9.

(4) An AFO that is not a CAFO will be considered to have taken reasonable measures if it has obtained and is in compliance with a permit by rule. An AFO will be permitted by rule if:

(a) (i) It has obtained and is in compliance with a site-specific NMP that implements Technical Standards and the requirements of 40 CFR 122.42(e)(1)(i) through (viii), and the practices and protocols identified under those provisions; or

(ii) It has received and is in compliance with the requirements of a Certificate of Environmental Stewardship under an Approved Agriculture Environmental Stewardship Program; and

(b) It keeps records adequate to demonstrate that it has met the requirements in this paragraph (4) and has, upon request, made those records available for review by the Director or the Director's representative; and

(c) (i) For a facility permitted by rule under 10.9(4)(a)(i), the facility has provided to the Director a notice of intent to be covered by this permit by rule provision and has confirmed that it is meeting the requirements of paragraphs (4)(a) and (b); or

(ii) For a facility permitted by rule under 10.9(4)(a)(ii), the facility has provided to the Director a copy of the Certificate of Environmental Stewardship issued by the Utah Conservation Commission.

KEY: water pollution, discharge permits
Date of Enactment or Last Substantive Amendment: [~~January 25, 2012~~|2013
Notice of Continuation: October 2, 2012
Authorizing, and Implemented or Interpreted Law: 19-5; 19-5-104; 40 CFR 503

Governor, Planning and Budget, Inspector General of Medicaid Services (Office of)
R367-1
(Changed to R30-1)
Office of Inspector General of Medicaid Services

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 37536
FILED: 04/24/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change implements the provisions required by H.B. 106 and H.B. 315 (2013 General Session). The Office of the Inspector General of Medicaid Services is moved from R367, Governor, Planning and Budget, Inspector General of Medicaid Services (Office of) to R30, Administrative Services, Inspector General of Medicaid Services (Office of).

SUMMARY OF THE RULE OR CHANGE: This rule change implements the provisions required by H.B. 106 and H.B. 315 (2013). The Office of the Inspector General (OIG) is repealing its previous administrative rule under Title R367 and reenacting it under Title R30. The Office is eliminating several redundant rules and incorporations by reference. The Office is removing provisions pertaining to billing codes, confidentiality, discrimination, and several statutes and regulations that are incorporated by reference. These provisions are not needed as they are redundant and imposed on the Office by other laws. This administrative rule is designed to simplify and clarify how the Office is to operate. The new rule implements how the Office will communicate with providers, conduct audits, make reports to law enforcement and execute the duties imposed by law. The new rule creates provisions regarding on-site visits, and training. Additionally, the rule implements a 36-month time frame for investigations and audits. The rule clarifies how policy is enforced and in accordance with the new provisions of H.B. 106 and H.B. 315 (2013). Lastly, the rule implements the human resource rules that the Office will use.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63A-11-1 through 63A-11-602

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The implementation of Rule R30-2 will not have any aggregate cost to the state budget. The rule further clarifies the duties and procedures of the Office of Inspector General outlined in Sections 63A-13-101 through 63A-13-602. No other expense is created by the issuance of this rule. There will be savings to the state budget, as this rule will further assist the OIG to recoup and recovery misappropriated Medicaid funds. This amount will vary year to year based upon the results of the audits.
♦ LOCAL GOVERNMENTS: The promulgation of this rule will not result in direct and measurable costs for local governments. Local governments are not involved in the Medicaid Program. Additionally, the OIG will be collecting wrongfully acquired Medicaid funds. These are funds that the local governments were not originally entitled to; any funds paid by the local government, if any, would be a reimbursement of state and federal money.
♦ SMALL BUSINESSES: The promulgation of this rule will not result in direct and measurable costs for small businesses. The OIG will be collecting wrongfully acquired Medicaid funds from small and solo practice medical providers. These are funds that the providers were not originally entitled to; any monies paid by the providers to the OIG, if any, would be a reimbursement of state monies.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The promulgation of this rule will not result in direct and measurable costs for other entities. The OIG will be collecting wrongfully acquired Medicaid funds from hospitals, large provider groups, pharmacies. These are funds that the providers were not originally entitled to; any monies paid by the providers to the OIG, if any, would be a reimbursement of state monies. Therefore there would be no additional costs to small businesses, just a reimbursement to the state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule R30-1 does not create new compliance costs for any local government or business. There are no regulatory mandates created by this rule. The rule establishes the OIG's new duties, audit responsibilities, and procedures. Due to this there is no cost created by the implementation of this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rule R30-1 does not create any additional costs to local governments or any businesses. The rule will outline the daily operations of the Office of Inspector General. The Office will seek to recover recoupment of wrongfully or erroneously acquired Medicaid funds. The entities that inappropriately received the monies do not incur additional costs, other than a reimbursement to the state of the money they were not otherwise entitled to. Further, entities and providers that are assessed a recoupment may have this recoup offset by future payments. This will minimize the impact to daily operations of the provider. The fiscal impact of Rule R30-1 follows the analysis conducted by the Office of Legislative Fiscal Analyst report for H.B. 84, which founded the office in July of 2011.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
GOVERNOR
PLANNING AND BUDGET,
INSPECTOR GENERAL OF MEDICAID SERVICES
(OFFICE OF)

288 N 1460 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Michael Green by phone at 801-538-6123, by FAX at 801-538-6382, or by Internet E-mail at mkgreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Michael Green, Policy and Training Coordinator

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[R367. Governor, Planning and Budget, Inspector General of Medicaid Services (Office of).

R367-1. Office of Inspector General of Medicaid Services.

R367-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Office of Inspector General of Medicaid Services in Utah, and defines all of the provisions necessary to administer the Office.

(2) The rule is authorized under Section 63J-4a-602 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) If any provider manual or policy guide is inconsistent with Administrative Rule, the Administrative Rule shall be supreme.

R367-1-2. Definitions.

(1) The terms used in this rule are defined in Section 63J-4a-102.

R367-1-3. The Office of Inspector General.

(1) The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act, The Office of Inspector General must ensure that the Medicaid Program is managed in an efficient and effective manner to minimize fraud, waste, and abuse, in the Medicaid program as outlined in Section 63J-4a-202. The Office of Inspector General has entered into a Memorandum of Understanding (MOU) with the Department outlining the delegation of duties from the Department to the Office and as required by federal and state statutes.

R367-1-4. Office Duties.

(1) The Office of the Inspector General shall perform the following duties:

(a) Adhere to appropriate standards as outlined in the Government Accounting Office's Government Auditing Standards.

(b) The Office will receive reports of potential fraud, waste, or abuse in the state Medicaid program through phone, website, or other electronic means open to the public:

(i) establish a 24-hour, toll free hotline monitored by staff, or voicemail as appropriate.

(ii) establish a separate identifiable email to report fraud, waste or abuse of Medicaid funds.

(c) The Office will investigate and identify potential or actual fraud, waste, or abuse in the state Medicaid program by post payment review of claims paid under fee-for service, managed care, capitation, waiver, contracts or other payment methods where funds are expended by the Department for Medicaid related services or programs.

(d) The Office will obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse in the state Medicaid program by either developing an in-house program, by contract with private vendors, or other suitable methods as agreed upon with the Department. The Office may also develop in-house programs in consultation with the Department.

(e) The Office will establish an MOU with the Medicaid Fraud Control Unit to identify and recover improperly or fraudulently expended Medicaid funds.

(f) The Office will determine appropriate methodology for identifying risk associated with the Division and its programs under Medicaid funding.

(g) The Office will regularly report to the Department regarding all identified cases of fraud, waste or abuse. The Office will report how the Department can reduce cost or improve performance through changes in policies or claims payment systems. The Office will operate the program integrity function and audit function to the extent possible and as described under a MOU with the Department to be established each state fiscal year beginning in July and ending In June of the following year. The MOU must be renewed each year by both the DOH and OIG.

(h) The Office will establish a means for providers to return payments to the Office. The Office will return all collected overpayments to the Department, except to pay Recovery Audit Contractors.

(i) The Office will provide training to agencies, providers and employees on identifying potential fraud, waste, or abuse of Medicaid funds regularly. All training materials and curriculum will be developed in consultation with the Department and may include Department representation.

R367-1-5. Incorporations by Reference.

(1) All rules, regulations, and laws below are incorporated by reference.

(a) 42 CFR 431.107(b)(2)
(b) 42 CFR 456, Subpart B
(c) 42 CFR 455.13
(d) 42 CFR 455.21
(e) 42 CFR 1007
(f) Title 63G, Chapter 2
(g) Title 26-1-17.5
(h) Section 26-1-24
(i) Section 63G-4-102
(j) 42 USC 139a(a)(3)
(k) 42 CFR 431, Subpart E

R367-1-6. Discrimination Prohibited.

(1) In accordance with Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 USC 70b), and the regulations at 45 CFR Parts 80 and 84, the Office assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R367-1-7. Utilization Review and Medicaid Services Provided under the Utah Medicaid Program.

(1) The Office may request records that support provider claims for payment under programs funded through the Department. These requests shall be in writing and identify the records to be reviewed. Written responses to requests must be returned within 30 days of the date of the written request. Responses must include the complete record of all services and supporting services for which reimbursement is claimed. If the provider is unable to produce the documents on request, the provider shall be granted 24 hours to provide all necessary and appropriate information supporting and documenting the need for services. However, if there is no response within the 30 day period, the Office will close the record and will evaluate the payment based on the records available.

(2) The Office may conduct announced or unannounced onsite reviews and visits. On-site reviews require that the provider submit records on request based on 42 CFR 431.107(b)(2). All announced visits will receive reasonable notice from the Office.

(3) The Office shall conduct hospital utilization reviews as outlined in the Department's Superior System Waiver in effect at the time service was rendered.

(a) The Office shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual criteria, published by McKesson Corporation.

(b) The standards in the InterQual criteria, or other suitable industry standard substitute, shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are excluded as a Medicaid benefit by rule or contract.

(c) Where InterQual or other suitable industry standard substitute criteria are silent, the Office shall approve or deny services based upon appropriate administrative rules or the Department's criteria as incorporated in the Medicaid provider manuals.

(4) Providers shall refund payments to the Office upon written request if any of the following occur:

(a) the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program; or

(b) does not comply with state or federal policies and regulations.

(c) If services cannot be properly verified or when a provider refuses to provide or grant access to records.

(d) Unless appealed, all refunds must be made to the Office within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R367-1-14.

(e) A provider shall reimburse the Office for all overpayments regardless of the reason for the overpayment. Including, but not limited to agency errors, inadvertent errors, or other program errors. The Office may make a request to the Department to deduct an equal amount from future reimbursements.

R367-1-9. Medicaid Fraud.

(1) The Office establishes and maintains methods, criteria, and procedures that meet all federal and state requirements for prevention, control of program fraud and abuse; and provider sanctioning and termination.

(2) The Office will enter into an MOU with The Medicaid Fraud Control Unit and the Department to ensure appropriate measures are established to reduce and prevent fraud and abuse in the Medicaid program.

R367-1-10. Confidentiality.

(1) Title 63G, Chapter 2, and Section 26-1-17.5 impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning providers, applicants, clients, and recipients to purposes directly connected with the administration of the plan. The Office will adopt those principles through incorporation of the references note.

R367-1-11. Right to Contract with Recovery Audit Organizations.

(1) The Office may contract for the investigation, notification and recovery of overpayments under any funds paid by the Department through the Medicaid program, Title XIX of the Social Security Act, under a contingency fee arrangement not to exceed the maximum amount set by CMS of the state's share actually recovered from overpayments according to federal regulations.

R367-1-12. Auditing of the Department of Health.

12.1. Audit Responsibilities.

(1) Audits will be conducted under the regular supervision of the Inspector General.

(2) The audit reports will then be released to the Director of the Governor's Office of Planning and Budget to which the Inspector General reports administratively.

(3) Audits will primarily be determined through a risk assessment approved by the Office.

(4) All activities of the Office will remain free of influence from any Department, Division, private or contracted entities.

(5) The Office audit group will follow the Generally Accepted Government Auditing Standards (GAGAS) as it relates to audit standards and training.

(6) The auditors will immediately notify the Inspector General of any serious deficiency or the suspicion of significant fraud during its review.

(7) Pursuant to Utah Code 63J-4a-301 the Office will have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating directly or indirectly to the state Medicaid program.

12.2. Audit Plan.

(1) An audit plan will be prepared by the Office at least annually and shall:

(a) Identify the audits to be performed, based on audit risk assessment reviewed annually;

(b) Identify resources to be devoted to audits in plan;

(c) Ensure that audits evaluate the efficiency and effectiveness of tax payer dollars in the Medicaid program;

(d) Determine adequacy of Medicaid's controls over federal and state compliance.

(2) An OIG audit shall:

(a) Issue regular audit reports on the effectiveness and efficiency of the defined audits within the Medicaid program in Utah;

(b) Ensure that such audits are conducted within professional standards such as those defined by the Institute of

~~Internal Auditors and Generally Accepted Governmental Auditing Standards (GAGAS);~~

~~(c) Report annually to the Governor's office on or before October 1, and to the Utah Legislature before November 30 as stated in Section 63J-4a-502.~~

~~12.3. Access to Records and Employees.~~

~~(1) In order to fulfill the duties described in Section 63J-4a-202, the Office shall have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating, directly or indirectly, as stated in 63J-4a-301. Access to employees that the inspector general determines may assist in the fulfilling of the duties of the Office shall be granted as stated in 63J-4a-302.~~

~~12.4. Subpoena Power.~~

~~(1) The Office shall have the power to issue a subpoena to obtain record or interview a person that the Office has the right to access as stated in 63J-4a-401.~~

~~R367-1-13. Billing Codes.~~

~~(1) In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA), along with other national accredited coding standards as defined under the federal law or other nationally accepted coding standards and as established under the Affordable Care Act of 2010 which requires all Medicaid providers to bill according to National Correct Coding Initiatives (N.C.C.I) that are in effect at the time of submitting claims to the Medicaid Agency for payments.~~

~~R367-1-14. Provider Communication.~~

~~(1) In completing the work as outlined in 63J-4a-202(k), to identify and recoup overpayments, the Office will communicate overpayments information as follows:~~

~~(a) Any suspected recoupment or take back against future funds less than $5,000 shall be communicated to the provider via email including a verification certificate attached to verify delivery.~~

~~(b) Any suspected recoupment or take back against future funds greater than $5,000 shall be communicated to the provider through certified mail or similar guaranteed delivery mechanism.~~

~~(c) Administrative hearing notice requirements will also comply with (a) and (b) above.~~

~~(d) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.~~

~~(2) Any request for records or documents will also comply with subsections (a) through (d).~~

~~R367-1-16. General Rule Format.~~

~~(1) The following format is used generally throughout the rules of the Office. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.~~

~~(2) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.~~

~~(3) Definitions. Definitions that have special meaning to the particular rule.~~

~~(4) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (4).~~

~~KEY: Inspector General, health, Medicaid fraud waste abuse~~
~~Date of Enactment or Last Substantive Amendment: December 27, 2012~~
~~Authorizing, and Implemented or Interpreted Law: 63J-4a-101; 63J-4a-201; 63J-4a-602~~]

R30. Administrative Services, Inspector General of Medicaid Services (Office of).

R30-1. Office of Inspector General of Medicaid Services.

R30-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Office of Inspector General of Medicaid Services in Utah, and defines all of the provisions necessary to administer the Office.

(2) The rule is authorized under Utah Code Annotated Section 63A-13-602 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R30-1-2. Definitions.

(1) The terms used in this rule are defined in Section 63A-13-102.

(2) Policy is defined as the Utah State Plan, Medicaid Administrative rule, provider manuals and their attachments, and the Medicaid Information Bulletins.

R30-1-3. The Office of Inspector General.

(1) The Office of Inspector General shall inspect and monitor the Utah Medicaid Program pursuant to Section 63A-13-202.

(2) The Office of Inspector General has entered into a Memorandum of Understanding (MOU) with the Department of Health outlining the delegation of duties from the Department to the Office and as required by federal and state statutes.

R30-1-4. Office Duties.

(1) The Office of the Inspector General shall perform the following duties:

(a) The Office shall receive reports of suspected fraud, waste, or abuse in the state Medicaid program through phone, website, mail, or other electronic means open to the public:

(i) Establish a 24-hour, toll free hotline monitored by staff, or voicemail as appropriate.

(ii) Establish a separate identifiable email to report fraud, waste or abuse of Medicaid funds.

(b) The Office shall investigate and identify potential or actual fraud, waste, or abuse in the state Medicaid program by post payment review of claims paid under fee-for service, managed care, capitation, waiver, contracts or other payment methods where funds are expended by the Department of Health for Medicaid related services or programs.

(c) The Office shall establish an MOU with the Medicaid Fraud Control Unit to identify and recover improperly or fraudulently expended Medicaid funds.

(d) The Office shall determine appropriate methodology for identifying risk associated with the Department of Health and its programs under Medicaid funding.

(2) The Office shall regularly report to the Department regarding all identified cases of fraud, waste or abuse. The Office will report how the Department can reduce cost or improve performance through changes in policies or claims payment systems. The Office will operate the program integrity function and audit function to the extent possible and as described under a MOU with the Department

(3) The Office shall establish a means for providers to return payments to the Office. The Office will return all collected overpayments to the appropriate department.

(4) The Office shall afford any person or entity due process and administrative hearing rights through Subsection R414-1-5(16).

R30-1-5. Incorporations by Reference.

(1) All rules, regulations, and laws below are incorporated by reference.

R30-1-6. Medicaid Fraud (Criminal).

(1) The Office establishes and maintains methods, criteria, and procedures that meet all federal and state requirements for prevention of program fraud and abuse.

(2) The Office will enter into an MOU with The Medicaid Fraud Control Unit (MFCU) and the Department to ensure appropriate measures are established to reduce and prevent fraud and abuse in the Medicaid program.

(3) The Office shall report any instances of suspected Provider criminal fraud or misconduct to the MFCU within reasonable time.

(a) A hold shall be placed on the funds in accordance with 42 CFR 455.23.

(i) The Office shall notify the provider of the suspension within five (5) days; notice shall be given to the provider in accordance with Section R30-1-11a.

(ii) Law Enforcement may request in writing to delay notification of the provider in accordance with 42 CFR 455.23.

(4) The Office shall report instances of suspected recipient criminal fraud or misconduct in accordance with Subsection 63A-13-202(1)(k) to the appropriate law enforcement agency within a reasonable time.

R30-1-7a. Auditing of the State and Local Entities: Audit Responsibilities.

(1) Audit is defined as an independent, objective review of a process and associated controls to determine the effectiveness, efficiency and or compliance of that program or process.

Audits will be conducted under the regular supervision of the Inspector General.

(a) The specific definition of Audit, defined above, shall only apply to audits executed within the scope of Section R30-1-7a.

(2) The audit reports pertaining to the functioning of the Department will then be released to the Governor, Speaker of the House, President of the Senate, Executive Director of the Department that is audited.

(3) Audits will primarily be determined through a risk assessment approved by the Office.

(4) Audit activities of the Office will remain free of influence from any Department, Division, private or contracted entities.

(5) The Office audit group will follow the Generally Accepted Government Auditing Standards (GAGAS) Federal OIG Quality Standards by the Council of Inspectors General on Integrity and Efficiency (CIGIE) as it relates to audit standards, inspections and review standards.

(6) The auditors will immediately notify the Inspector General of any serious deficiency or the suspicion of significant fraud during its review.

(7) Pursuant to Section 63A-13-301 the Office will have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating directly or indirectly to the state Medicaid program.

R30-1-7b. Auditing of the State and Local Entities: Audit Plan.

(1) An audit plan will be prepared by the Office at least annually and shall:

(a) Identify the audits to be performed based on audit risk assessment reviewed annually;

(b) Identify resources to be devoted to audits in plan;

(c) Ensure that audits evaluate the efficiency and effectiveness of tax payer dollars in the Medicaid program;

(d) Determine adequacy of Medicaid's controls over federal and state compliance.

(2) The OIG audit function shall:

(a) Issue regular audit reports on the effectiveness and efficiency of the defined audits within the Medicaid program in Utah;

(b) Ensure that such audits are conducted within professional standards such as those defined by the Generally Accepted Governmental Auditing Standards (GAGAS), GIGIE QSI, or the Association of Inspector Generals;

(c) Report annually to the Governor's office on or before October 1, and to the Utah Legislature before November 30 as stated in Section 63A-13-502.

R30-1-8a. Auditing of Medical Providers.

(1) The Office may conduct performance and financial audits of entities described in Subsection 63A-13-202(2).

(2) Ensure that such audits are conducted within professional standards such as those defined by the Generally Accepted Governmental Auditing Standards (GAGAS), Federal Office of Inspector General, or the Association of Inspector Generals.

(3) The Office may conduct audits based upon risk assessments, random samples, and referrals from any credible source.

(4) The audit findings shall be reported to the audited entity within 30 days of the closing of the audit. The Office shall send a written report with the findings and recommendations.

(5) Each audit shall consider impact to the provider community when making recommendations to the Department and applying a remedy if necessary.

R30-1-8b. Access to Records and Employees.

(1) In order to fulfill the duties described in Section 63A-13-202, the Office shall have unrestricted access to all records of

state executive branch entities, all local government entities, and all providers relating, directly or indirectly, as stated in 63A-13-301. Access to employees that the inspector general determines may assist in the fulfilling of the duties of the Office shall be granted as stated in Section 63A-13-302.

(2) The Office shall request access to records or documents through a written request. The responding agency or entity must respond to the request within 30 days.

(a) The written request shall be sent in accordance with R30-1-11-2.

R30-1-9. Subpoena Power.

(1) The Office shall have the power to issue a subpoena to obtain records or interview a person that the Office has the right to access as stated in 63A-13-401.

(2) The form of Subpoena shall meet the requirements of Utah Rule of Civil Procedure 45.

R30-1-10a. Post-Payment Review: Utilization Reviews and Medicaid Reviews of Services Provided Under the Utah Medicaid Program.

(1) The Office shall conduct hospital utilization reviews as outlined in the Department's Superior System Waiver in effect at the time service was rendered.

(2) The Office may request records that support provider claims for payment under programs funded through the Department.

(3) The medical records requests shall comply with Section R30-1-11b.

(4) The Office shall review the records in accordance with Department rules and policies in effect at the time the service was rendered.

(i) The Office shall enforce policies in accordance with Subsections 63A-13-202(3)(a) - (b).

R30-1-10b. Post-Payment Review: Thirty Day Re-Admissions.

(1) The Office shall conduct reviews of hospital re-admissions within 30 days. The reviews shall be conducted in accordance with the Department's Superior System Waiver in effect at the time service was rendered.

(2) The Office may request records to evaluate the re-admissions.

(3) The medical records requests shall comply with Section R30-1-11b.

(4) If after review of the re-admission and the claim or encounter does not comply with the Department's policy the Office shall appropriately enforce the Department's policy and or rule.

R30-1-10c. Post-Payment Review: Medicaid Program Integrity (MPI).

(1) The Office shall conduct post-payment review of claims submitted by providers to Medicaid.

(2) The Office shall investigate of any referral that contains allegations of fraud, waste and abuse in accordance with 42 CFR 455.

(3) The Office shall conduct post-payment review of the claims for fraud, waste and abuse.

(4) The Office may request medical records to evaluate the claims.

(5) The medical records requests shall comply with Section R30-1-11b.

(6) If after review, the claim submitted does not comply with the Department Health policy, the Office shall appropriately enforce Department Health policy and or rule.

(7) The Office shall enforce policies in accordance with Subsections 63A-13-202(3)(a) - (b).

R30-1-10d. Post-Payment Review: Site Visits.

(1) The Office of Inspector General shall conduct site visits in a minimally intrusive manner. The Office shall perform the following prior to a site visit:

(a) The Office shall notify the provider of a site visit in writing, seven (7) calendar days before the inspection. The notice requirement shall comply with Section R30-1-11a.

(b) The Office shall make reasonable efforts to coordinate and afford the provider an opportunity to make an appointment and arrange visits at a time best suited for the provider.

(c) The Office shall attempt to minimize interference with patient care.

(2) If there is a credible allegation of fraud, the requirements of Section R30-1-12(1) are not required.

(3) This rule does not limit the Office from conducting new Provider Enrollment site visits under 42 CFR 455.432.

(a) Provider Enrollment visits shall be conducted in a minimally intrusive manner, during normal business hours.

(b) No notice is required for Provider Enrollment site visits, if it is a verification visit.

R30-1-10e. Post-Payment Review: Training.

(1) The Office of Inspector General shall provide training to the provider community at no cost.

(2) The training may include the following:

(a) Common methods to prevent fraud, waste and abuse.

(b) Current trends on how fraud, waste and abuse are occurring.

(c) How to report fraud, waste, and abuse.

(d) Office programs and audit policies, procedures, and compliance.

(e) Any other topic necessary to carry out the duties of the Office.

(3) The Office may conduct quarterly webinars on topics that pertain to Medicaid.

(4) The Office may consult with the Department to prepare curriculum and training material.

(5) Any provider may request training by contacting the Office.

R30-1-10f. Post-Payment Review: Policy Reviews.

(1) The Office shall conduct policy reviews of the Medicaid Provider Manuals and the Medicaid information bulletins (MIBs). These reviews shall be conducted as follows:

(a) The Office shall review the policies for internal inconsistencies and report those to the Department.

(b) The Office shall complete the review within 45 days from receiving the proposed policy from the Department.

(c) The Office shall advise and make recommendations on the policy if there is a policy that would create waste or abuse in the Medicaid program.

(d) Recommendations may be submitted to the Department for review.

(e) This procedure shall occur prior to the publishing of the MIB and policies.

R30-1-11a. Provider Communication: Notices of Recovery.

(1) The Office shall notify providers of overpayments and recover improperly paid claims through the following:

(a) Any suspected recoupment or take back against future funds less than $5,000 shall be communicated to the provider via first class mail including a verification certificate attached to verify delivery.

(b) Any suspected recoupment or take back against future funds greater than $5,000 shall be communicated to the provider through certified mail or similar guaranteed delivery mechanism.

(c) Administrative hearing notice requirements will also comply with (a) and (b) above.

(d) Notices of suspension of payments and placement of holds will also comply with (a) and (b) above.

(d) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

(2) The Office shall send the notice of recovery to the mailing address that is on file with the Department of Health. The Provider may, request in writing, that the Office use the billing address or the service location address on file with the Department of Health. The written request to the Office shall specify the address to be used, the address identified by the Provider must be on file with the Department of Health, the OIG shall not send correspondence to an address not on file with the Department of Health.

R30-1-11b. Provider Communication: Records Requests.

(1) The Office may request records that support provider claims for payment under programs funded through the Department of Health. These requests shall be in writing and identify the records to be reviewed.

(2) The requests shall be sent first class mail with proper United States Postal Service postage attached; to the mailing address on file with the Department of Health.

(i) If a request is returned undeliverable the Office shall send the notification of an invalid address to the Department of Health.

(ii) The Office shall file a certificate of service that certifies the request was sent that contain the following requirements:

(a) The date of mailing.

(b) The name of the sender.

(c) The signature, electronic or otherwise, of the sender that verifies the document was properly mailed.

(d) Address that the records request was sent to.

(e) Written responses to requests shall be returned within 30 days of the date of the written request. Responses must include the complete record of all services and supporting services for which reimbursement is claimed.

(f) However, if there is no response within the 30 day period, the Office shall close the record and shall evaluate the payment based on the records that the Office has in its file.

(3) The Office shall send the requests for records to the mailing address that is on file with the Department of Health. The Provider may, requests in writing, that the Office use the billing address or the service location address on file with the Department of Health. The written request to the Office shall specify the address to be used, the address identified by the Provider must be on file with the Department of Health, the OIG shall not send correspondence to an address not on file with the Department of Health.

(4) The Office shall limit requests for medical records to 36 months prior to the date of the inception of the investigation in accordance with Section 63A-13-204.

R30-1-12. Placement of Hold.

(1) The Office shall notify the provider of any hold on payment through written correspondence with in five (5) days. The correspondence shall be communicated to the provider in a manner consistent with Section R30-1-11a.

(2) The correspondence shall contain the following:

(a) Name and address of provider.

(b) Notification of suspension.

(c) General reason for suspension.

(d) Explanation of due process rights.

(3) Providers may request a state fair hearing through Subsection R414-1-5(16) Office of Inspector General Administrative Hearings Procedures Manual.

R30-1-13. Human Resources.

(1) The Office incorporates by reference the DHRM rules under Title R477 applicable to the type and category of the employees in the Office.

(2) The Office incorporated by reference the OIG Human Resources Manual and Policies.

R30-1-14. General Rule Format.

(1) The following format is used generally throughout the rules of the Office. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(2) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(3) Definitions. Definitions that have special meaning to the particular rule.

(4) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (4).

KEY: Office of the Inspector General, Medicaid fraud, Medicaid waste, Medicaid abuse
Date of Enactment or Last Substantive Amendment: 2013
Authorizing, and Implemented or Interpreted Law: 63A-13-101 to 602

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-1-30
Governing Hierarchy

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37546
FILED: 04/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is necessary to comply with H.B. 106, 2013 General Session, which requires the Office of Inspector General of Medicaid Services (OIG) to identify conflicts between the Medicaid State Plan, Department administrative rules, Medicaid provider manuals, and Medicaid Information Bulletins (MIBs), and to recommend that the Department reconcile inconsistencies.

SUMMARY OF THE RULE OR CHANGE: Section R414-1-30 is removed in its entirety to defer to provisions set forth in H.B. 106, 2013 General Session, which require OIG to identify conflicts between the Medicaid State Plan, Department administrative rules, Medicaid provider manuals, and MIBs, and to recommend that the Department reconcile inconsistencies.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no fiscal impact because the review requirements in H.B. 106 do not create administrative costs to either the Department or OIG.
♦ LOCAL GOVERNMENTS: There is no fiscal impact to local governments because they neither fund nor provide Medicaid services to Medicaid recipients.
♦ SMALL BUSINESSES: There is no fiscal impact because the review requirements in H.B. 106 do not apply to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not expect a fiscal impact to providers and recipients because any inconsistencies that could arise should not affect provider reimbursement or Medicaid services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not expect a fiscal impact to a single provider or recipient because any inconsistencies that could arise should not affect provider reimbursement or Medicaid services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change should have no effect on business as it will not change reimbursement rates.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
[~~R414-1-30. Governing Hierarchy.~~
~~(1) The Utah Medicaid State Plan under Title XIX of the Social Security Act Medical Assistance Program and any Waivers to that State Plan ("State Plan") shall be the governing authority for implementing the Medicaid program to the extent incorporated by rule. If a conflict exists between a Waiver and the Utah Medicaid State Plan, the Waiver shall govern.~~
~~(2) If an administrative rule addresses an issue that is not fully addressed by the State Plan, the administrative rule adopted by the Department shall govern the implementation of the Medicaid program, after giving full effect to the State Plan.~~
~~(3) Statements or actions by department employees shall not constitute exceptions or waivers to the governing authority of Subsection R414-1-30 (1) or (2).~~

]KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~March 1,~~] 2013
Notice of Continuation: March 2, 2012
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-11
Podiatry Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37578
FILED: 05/01/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to broaden client access to podiatric services by allowing podiatrists to perform services within their scope of license to all categorically and medically needy recipients.

SUMMARY OF THE RULE OR CHANGE: This amendment broadens client access to podiatric services through a provision that allows podiatrists to perform services within their scope of license to all categorically and medically needy recipients. It also makes other clarifications and refers to the Podiatric Services Provider Manual for descriptions of all non-covered services, covered services and service limitations.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because the increase in revenue for podiatrists comes from the same appropriation of funds that general practitioners continue to receive for podiatric services.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund nor provide Medicaid services to Medicaid recipients.
♦ SMALL BUSINESSES: General practitioners may see a slight decrease in revenue with the increase in revenue for podiatrists. Nevertheless, there is no data to estimate how much that decrease will be.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: General practitioners may see a slight decrease in revenue with the increase in revenue for podiatrists. Conversely, Medicaid recipients will see nominal savings with the increase in access to podiatric services. Nevertheless, there is no data to estimate the decrease in revenue or the increase in savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A single general practitioner may see a slight decrease in revenue. Nevertheless, there is no data to estimate how much that decrease will be.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should be revenue neutral for providers. Reductions in one provider class will be offset by increased revenues for podiatrists.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-11. Podiatr[~~y~~]ic Services.
R414-11-1. Introduction and Authority.

Podiatr[~~y~~]ic services are authorized by 42 CFR 440.[~~6~~]50 and include the examination, diagnosis, or treatment of the foot. Podiatr[~~y~~]ic services are optional and provided in accordance with 42 CFR 440.225.

[~~R414-11-2. Definitions.~~

~~In this rule, "Subluxation" means a structural misalignment or partial dislocation of a joint or joints in the feet.~~

]**R414-11-[~~3~~]2. Client Eligibility Requirements.**

Podiatr[~~y~~]ic services are available to categorically and medically needy individuals.

R414-11-[~~4~~]3. Service Coverage.

[~~(1) The Department covers the following podiatry services:~~
~~(a) foot incision and drainage of simple abcess;~~
~~(b) foot skin debridement;~~
~~(c) cutting benign or premalignant lesions;~~
~~(d) treatment of nail plate;~~
~~(e) injections for ganglion cysts;~~
~~(f) foot bone excisions;~~
~~(g) walking cast, Unna boots;~~
~~(h) radiologic exam of ankle or foot; and~~
~~(i) office visits.~~
~~(2) The Department covers the following podiatry-related medical supplies and equipment:~~
~~(a) shoes attached to a brace or prosthesis;~~

~~(b) shoes specially constructed to provide for a totally or partially missing foot; and~~
~~(c) additional supplies not regularly used for office surgery procedures.~~
~~(3) Shoe repair is covered if it relates to external modification of an existing shoe to accommodate a leg length discrepancy requiring a shoe build up of one inch or more.~~
] Podiatric services are limited to the services described in the Podiatric Services Utah Medicaid Provider Manual. A physician, osteopath, or podiatrist may provide podiatric services within the scope of their respective professional license.

R414-11-[5]4. Limitations.
[~~(1) Service limitations that apply to physicians also apply to podiatrists.~~
~~(2) Treatment of a fungal (mycotic) infection of the toenail is limited to recipients with documented clinical evidence of mycosis that shows inflammation, infection, erythema, or marked limitation of ambulation.~~
~~(3) Podiatry services in long-term care facilities are covered with the following limitations:~~
~~(a) podiatry visits are limited to once every 60 days;~~
~~(b) debridement of mycotic toenails is limited to once every 60 days;~~
~~(c) trimming corns, warts, callouses, or nails is limited to once every 60 days;~~
~~(d) podiatry visits that include only evaluation and management are not covered;~~
~~(4) Medicaid does not cover the administration of general anesthesia and foot amputations by podiatrists.~~
~~(5) The removal of corns, warts, or callouses is limited to patients endangered by diabetes, arteriosclerosis or Buerger's disease.~~
] Podiatric service limitations are described in the Podiatric Services Utah Medicaid Provider Manual.

R414-11-[6]5. Non-Covered Services.
[~~(1) The following preventive or routine foot care services are not covered:~~
~~(a) the trimming, cutting, clipping, or debridement of nails outside of long-term care facilities;~~
~~(b) hygienic and preventive maintenance care, such as cleaning and soaking of the feet, the use of massage or skin creams to maintain skin tone of either ambulatory or bedfast patients, and any other service performed in the absence of localized illness or injury;~~
~~(c) any application of topical medication;~~
~~(2) Supportive devices that include arch supports, foot pads, foot supports, orthotic devices, or metatarsal head appliances are not covered.~~
~~(3) The following subluxation services are not covered:~~
~~(a) surgical correction of a subluxated foot structure, or surgical procedures performed to improve foot function and alleviate symptomatic conditions;~~
~~(b) treatment that includes evaluations and prescriptions of supporting devices, and the local condition of flattened arches regardless of the underlying pathology.~~
~~(4) Internal modification of a shoe is not covered.~~
~~(5) Shoes or other supportive devices for the feet that are not an integral part of a leg brace or prosthesis are not covered.~~
~~(6) Special shoes are not covered. These include:~~
~~(a) mismatched shoes (unless attached to a brace);~~
~~(b) shoes to support an overweight individual;~~
~~(c) "orthopedic" or "corrective" trade name or brand name shoes; and~~
~~(d) "athletic" or "walking" shoes.~~
~~(7) Personal comfort items such as "cookies" or other comfort accessories are not covered.~~
] Non-covered services are described in the Podiatric Services Utah Medicaid Provider Manual.

R414-11-[7]6. Reimbursement for Podiatr[~~y~~]ic Services.
(1) Reimbursement for services is limited to one podiatr[~~y~~]ic office visit per day.
(2) A podiatrist may bill for laboratory procedures necessary for diagnosis and treatment of the patient if equipment necessary for the laboratory procedure is available in the podiatrist's office. Laboratory services requested by a podiatrist but provided by an independent laboratory or hospital outpatient laboratory must be billed directly by the laboratory.
(3) Palliative care is included in the specific service and must be billed by that service only, not through the use of an office call procedure code.
(4) Payments are based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges to private pay patients.[~~ Fees are established by discounting historical charges, and by professional judgment to encourage efficient, effective and economical services.~~]

R414-11-[8]7. Copayment Policy.
Each Medicaid client is responsible to pay a copayment amount that complies with the requirements of the [~~Utah~~]Medicaid State Plan and Rule R414-1.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~May 1, 2010~~]2013
Notice of Continuation: October 21, 2009
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-70
Medical Supplies, Durable Medical Equipment, and Prosthetic Devices

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37528
FILED: 04/17/2013

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to remove all references to the Medical Supplies List, which is replaced by

the Coverage and Reimbursement Code Look-up Tool, and is not an attachment to the Medical Supplies Provider Manual.

SUMMARY OF THE RULE OR CHANGE: This amendment removes all references to the Medical Supplies List and makes other clarifications.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because this change only clarifies that the Medical Supplies List is not an attachment to the Medical Supplies Provider Manual.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund nor provide Medicaid services to Medicaid recipients.
♦ SMALL BUSINESSES: There is no impact to small businesses because this change only clarifies that the Medical Supplies List is not an attachment to the Medical Supplies Provider Manual.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because this change only clarifies that the Medical Supplies List is not an attachment to the Medical Supplies Provider Manual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because this change only clarifies that the Medical Supplies List is not an attachment to the Medical Supplies Provider Manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This is a technical change allowing certain material to be more easily located on-line.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-70. Medical Supplies, Durable Medical Equipment, and Prosthetic Devices.
R414-70-1. Introduction and Authority.

(1) This rule governs the provision of medical supplies, durable medical equipment (DME), and prosthetic device services.

(2) This rule is authorized by Sections 26-18-3 and 26-1-5.

(3) As required by Section 26-18-2.3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.

R414-70-2. Definitions.

As used in this rule:

(1) "Durable medical equipment" or "DME" means equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose;

(c) generally is not useful to a person in the absence of an illness or injury; and

(d) is suitable for use in the home.

(2) "Entitled to nursing facility services" means an individual who:

(a) is in a nursing facility and whose nursing facility stay is covered by Medicaid; or

(b) is receiving services in a waiver program for individuals who require nursing facility level of care.

(3) "Individual eligible for optional services" means an individual who is not entitled to nursing facility services.

(4) "Individual entitled to mandatory services" means an individual who is entitled to nursing facility services.

(5) "Medical supplies" means items for medical use that are suitable for use in the home and that are disposable or semi-disposable and are non-reusable.

(6) "Medical Supplies Manual[~~ and List~~]" means services described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, [~~with its referenced Attachment, Medical Supplies List, ~~]as incorporated [~~at~~]in Section R414-1-5[~~(2)~~].

(7) "Prosthetic device" means replacement, corrective, or supportive devices that are suitable for use in the home, such as braces, orthoses, or prosthetic limbs prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

(a) artificially replace a missing portion of the body;

(b) prevent or correct physical deformities or malfunction; or

(c) support a weak or deformed portion of the body.

R414-70-3. Services.

(1) Medical supplies, DME, and prosthetic devices are optional services.

(2) Medical supplies, DME, and prosthetic devices are limited to services described in the Medical Supplies Manual[~~and List~~].

(3) The Medical Supplies Manual [~~and List~~]specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Medical supplies, DME, and prosthetic devices may be provided to an individual only as part of a written plan that is reviewed at least annually by a physician.

R414-70-4. Services for Individuals Eligible for Optional Services.

(1) An individual eligible for optional services may receive medical supplies, DME, and prosthetic devices as described in the Medical Supplies Manual[~~and List~~].

(2) An individual eligible for optional services must meet the criteria established in the Medical Supplies Manual [~~and List~~]and obtain prior approval if required.

R414-70-5. Services for Individuals Eligible for Mandatory Services.

(1) An individual entitled to mandatory services may receive medical supplies, DME, and prosthetic devices as described in the Medical Supplies Manual[~~and List~~].

(2) An individual eligible for mandatory services must meet the criteria established in the Medical Supplies Manual [~~and List~~]and obtain prior approval if required.

(3) An individual entitled to mandatory services may request an agency review to seek medical supplies and DME not listed in the Medical Supplies Manual[~~and List~~].

R414-70-6. Services for Individuals Residing in Long Term Care Facilities.

(1) The Department provides medical supplies, DME, and prosthetic devices to individuals residing in a nursing care facility or an ICF/MR as part of the per diem payment.

(2) An individual residing in a nursing care facility or ICF/MR may receive additional medical supplies, DME, and prosthetic devices only as specifically indicated [~~o~~]in the Medical Supplies Manual[~~and List~~].

(3) An individual residing in a nursing care facility or an ICF/MR may request an agency review to seek medical supplies and DME not listed in the Medical Supplies Manual[~~and List~~].

R414-70-7. Less Costly Alternative.

The Department may provide at its discretion services not described in the Medical Supplies Manual [~~and List~~]as provided in Section R414-1-6[~~(2)(dd)~~].

R414-70-8. Reimbursement.

Medical supplies, DME, and prosthetic devices are reimbursed using the fee schedule in Attachment 4.19-B of the [~~Utah~~] Medicaid State Plan and incorporated by reference in R414-1-5.

KEY: Medicaid, medical supplies, durable medical equipment, prosthetics
Date of Enactment or Last Substantive Amendment: [~~August 4, 2008~~]2013
Notice of Continuation: September 27, 2012
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-2.3; 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-401-3
Assessment

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37576
FILED: 05/01/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to calculate the per patient day assessment for both nursing facilities and intermediate care facilities for persons with intellectual disabilities (ICFs/ID).

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-401-3(2), every nursing facility is assessed at the uniform rate of $14.57 per patient day, which is an increase from the previous $14.50 per patient day assessment, based upon projected days. In Subsection R414-401-3(2), ICFs/ID are assessed at the uniform rate of $6.50 per patient day, which is a decrease from the previous $6.80 per patient day assessment, based upon projected days. These updates are based on estimates of patient days for State Fiscal Year 2014 and the appropriation amounts.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The update to the facility assessment rate is anticipated to be budget neutral as it updates the collection rate based on projected days in State Fiscal Year 2014 and the appropriation amount. The update to the ICF/ID assessment rate is anticipated to be budget neutral as it updates the collection rate based on projected days in State Fiscal Year 2014 and the appropriation amount.

♦ LOCAL GOVERNMENTS: Inasmuch as swing beds are variable, it is not possible to determine the cost or savings to local hospital and swing bed facilities.

♦ SMALL BUSINESSES: Nursing facilities will realize an increased cost based upon the increase in the assessment rate. Inasmuch as patient days are variable, it is not possible to determine the increased cost that will be realized by these facilities. ICFs/ID will realize a decreased cost based upon the decrease in the assessment rate. Inasmuch as patient days are variable, it is not possible to determine the decreased cost that will be realized by these facilities.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Medicaid nursing facility providers will realize an increase in cost to non-Medicaid-certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid. ICFs/ID will realize a decreased cost based upon the decrease in the assessment rate. Inasmuch as patient days are variable, it is not possible to determine the decreased cost that will be realized by these facilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs include an increased collection of $0.07 per non-Medicare patient day from each nursing facility and a decrease of $0.30 per qualifying patient day for the ICF/ID providers. The assessment monies are used to draw down federal matching funds that result in higher reimbursement rates than would be possible without the assessment monies. All Medicaid-certified nursing and swing bed facilities have benefited from this process. The amount of overall gain depends on the number of Medicaid patients in the facility. In addition, there would be an increase in cost to non-Medicaid-certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This will have minimum impact on business as the majority of those being assessed will benefit from increased payment from Medicaid.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-401. Nursing Care Facility Assessment.
R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is $14.5[~~0~~]7 per non-Medicare patient day provided by the facility, except that intermediate care facilities for people with intellectual disabilities shall be assessed at the uniform rate of $6.[~~8~~]50 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities effective January 1, 2006. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

KEY: Medicaid, nursing facility
Date of Enactment or Last Substantive Amendment: [~~July 1, 2012~~]2013
Notice of Continuation: June 25, 2009
Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-35a; 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-506
Hospital Provider Assessments

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37577
FILED: 05/01/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement the Hospital Provider Assessment Act in accordance with S.B. 166 of the 2013 General Session of the Utah Legislature and to update the rule to allow new providers.

SUMMARY OF THE RULE OR CHANGE: This amendment corrects both a citation and a section number in the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department does not anticipate any impact to the General Fund because this change only implements a change to a citation.

♦ LOCAL GOVERNMENTS: There is no impact to local governments because this change only implements a change to a citation.
♦ SMALL BUSINESSES: There is no impact to small businesses because this change only implements a change to a citation.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact because this change only implements a change to a citation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only implements a change to a citation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should have no impact on business as it is a technical amendment correcting the statutory citation.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-506. Hospital Provider Assessments.
R414-50[4]6-2. Definitions.

The definitions in Section 26-36a-103 apply to this rule.

R414-506-3. Audit of Hospitals.

(1) For hospitals that do not file a Medicare cost report for the time frames outlined in S[~~ubs~~]ection 26-36a-203[~~(3) and (4)~~], the Department of Health shall audit the hospital's records to determine the correct discharges for the assessment.

(2) Hospitals subject to the assessment shall make their records available for reasonable inspection upon written request from the Department. Failure to make the records available shall be considered non-compliance and subject the hospital to penalties set forth in Section R414-506-5.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~July 1, 2012~~]2013
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-36a

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Health, Health Care Financing, Coverage and Reimbursement Policy
R414-509
Medicaid Autism Waiver Open Enrollment Process

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37549
FILED: 04/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify legislative intent to implement the Medicaid Autism Waiver under H.B. 272, 2012 General Session.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies that children who are two years of age through six years of age are eligible to receive Medicaid services under the Autism Waiver if they meet other eligibility requirements. This change, therefore, extends eligibility for the waiver through six years of age. This amendment also makes other clarifications. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of 05/01/2013 is under DAR No. 37548 in this issue, May 15, 2013, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because this amendment neither creates new services nor eliminates current ones. All services are in accordance with legislative intent to allow children who are two years of age through six years of age to become eligible under the Autism Waiver, and are within appropriations approved by the 2012 Legislature.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund nor provide Medicaid services to Medicaid recipients.
♦ SMALL BUSINESSES: There is no impact to small businesses because this amendment neither creates new services nor eliminates current ones. All services are in accordance with legislative intent to allow children who are

two years of age through six years of age to become eligible under the Autism Waiver, and are within appropriations approved by the 2012 Legislature.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because this amendment neither creates new services nor eliminates current ones. All services are in accordance with legislative intent to allow children who are two years of age through six years of age to become eligible under the Autism Waiver, and are within appropriations approved by the 2012 Legislature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because this amendment neither creates new services nor eliminates current ones. All services are in accordance with legislative intent to allow children who are two years of age through six years of age to become eligible under the Autism Waiver, and are within appropriations approved by the 2012 Legislature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have no impact on business as it does not change the reimbursement for services.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-509. Medicaid Autism Waiver Open Enrollment Process.
R414-509-1. Introduction and Authority.

(1) This rule defines the open enrollment process to enroll individuals in the Medicaid Autism Waiver program.

(2) This rule is authorized by Section 26-18-407. Waiver services are optional and provided in accordance with 42 CFR 440.225.

R414-509-2. Definitions.

(1) "Attrition" means the act of a waiver recipient leaving the waiver for any reason. Examples include the recipient moving out-of-state or the recipient turning [~~six~~]seven years of age.

(2) "Geographical Region" means a county or counties that are identified as belonging to one of the twelve Utah local health department districts.

(3) "Department" means the Department of Health.

(4) "Open enrollment" means the period during which the Department accepts waiver applications.

(5) "Opening" means the availability for an individual to participate in the Medicaid Autism Waiver program.

(6) "Waiver Operating Agency" means the Department of Human Services, which contracts with the Department of Health to implement defined waiver operations.

R414-509-3. Open Enrollment Eligibility Requirements.

To participate in the open enrollment process, the individual must meet the following eligibility requirements:

(1) The individual must have a diagnosis of an autism spectrum disorder from a licensed clinician. Diagnosis must be rendered by a clinician who is authorized under the scope of [~~their~~]his licensure;

(2) On the final day of the open enrollment period, the individual must:

(a) [~~have had his or her second birthday~~]Be at least two years of age;[~~ and~~]

(b) [~~b~~]Be not older than [~~five~~]six years and six months of age; and

(3) [~~The individual must m~~]Meet the financial eligibility requirement defined in the Medicaid Autism Waiver program.

R414-509-4. Open Enrollment Periods.

The Department will determine when open enrollment periods are held and for what duration based on the availability of funds for the Medicaid Autism Waiver program.

R414-509-5. Open Enrollment Procedures.

(1) The Department accepts the following means of application during open enrollment periods:

(a) Online application, with a time and date stamp confirming that the application was received within the open enrollment period;

(b) Facsimile, with a time and date stamp confirming that the application was received within the open enrollment period; and

(c) Mail, with the postmark on applications dated no sooner than the first day of the open enrollment period and no later than the last day of the open enrollment period.

(2) The number of individuals who may enroll in the waiver program during an open enrollment period is based on the availability of funds.

(3) The Department enrolls all individuals who meet the requirements of Section R414-509-3 if the number of applications does not exceed the number of available openings when the open enrollment period ends.

(4) If the number of applications exceeds the number of available waiver openings, then the Department shall:

(a) Compile all applications that it receives during the open enrollment period;

(b) Assign each application a random number;

(c) Create lists of randomly numbered applications by assigned geographical region;

(d) Assure that rural and underserved regions of the state are represented. The Department assigns waiver openings by geographical regions as follows:

(i) The Department allocates openings to each geographical region based on the percentage of population [~~of the State's population that~~]who reside[~~s~~] within the geographical region. The Department obtains population information from the most recent United States Census Report;

[~~(ii) if insufficient applications are present in a geographic region to fill all existing openings, the Department distributes the remaining waiver openings to an adjacent geographical region;~~

] (e) The Department [~~B~~]begins at the top of the randomized list and matches the number of available geographical openings with the same number of applications;

(i) If a selected applicant does not meet the eligibility criteria described in Section R414-509-3, the Department selects the next application on the randomized list;

(f) The Department [~~E~~]enrolls the selected individual[~~s~~] into waiver services.

(5) If there are not enough applications to fill all openings within a geographical region, the Department distributes the remaining waiver openings to other geographical regions.

R414-509-6. Procedures for Filling Openings Created by Attrition.

Attrition is ongoing in the Medicaid Autism Waiver program because the waiver serves a child only through the end of the month in which the child turns [~~six~~]seven years of age.

(1) To fill waiver openings due to attrition outside of open enrollment periods, the Department develops an applicant pool.

(a) The Department determines the number of applicants available in the applicant pool for each geographical region by using the process described in Subsection R414-509-5(4)(d)(i) to determine the number of waiver openings and factoring that number by four;

(b) The Department requires the Waiver Operating Agency to inform the Department of all waiver openings within ten business days;

(c) The Department identifies the geographical region where each opening occurs;

(d) The Department identifies the next randomly numbered application available within that geographical region;

(e) The Department matches the randomly numbered application to the applicant name, and based on the applicant's age, evaluates whether the applicant continues to be eligible for the waiver.

(i) To be eligible for waiver enrollment on the date of identification, the applicant may not exceed [~~five~~]six years and six months of age;

(ii) If the applicant is not eligible for waiver enrollment based on Subsection R414-509-6(1)(e)(i), the Department identifies the next randomly numbered application available within the geographical region until the Department can identify an eligible applicant.

(2) If there are not enough applications to fill all openings within a geographical region, the Department distributes the remaining waiver openings to other geographical regions.

([~~2~~]3) When the Department determines an open enrollment period is going to occur, it may suspend filling openings that arise through attrition.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~October 1, 2012~~]2013
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Human Resource Management, Administration
R477-1-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37561
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendments are to change one term, add one provision to comply with Whistleblower Amendments (S. B. 95, 2013 General Session), add one definition and alter another for clarity.

SUMMARY OF THE RULE OR CHANGE: The term "time limited" is changed to "temporary" and a definition is added for "separation". Language is added to grievance definition to include reporting employees as defined in new code provisions. Current employees are differentiated from applicants with regard to preemployment drug testing.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees because the changes are administrative.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are administrative and have no direct compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or other entities outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/30/2013 09:00 AM, Capitol Hill Senate Building, 450 N State Street, Seagull Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-1. Definitions.
R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned salary rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: A DHRM approved change of a position from one job to another job or a salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(7) Administrative Salary Decrease: A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head or commissioner.

(8) Administrative Salary Increase: An increase in the current actual wage based on special circumstances determined by an agency head or commissioner.

(9) Agency: An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

(10) Agency Head: The executive director or commissioner of each agency or a designated appointee.

(11) Agency Human Resource Field Office: An office of the Department of Human Resource Management located at another agency's facility.

(12) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) Alternative State Application Program (ASAP): A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) Appeal: A formal request to a higher level for reconsideration of a grievance decision.

(15) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) Break in Service: A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(17) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(18) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(19) Career Mobility: A [~~time limited~~]temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(20) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(21) Career Service Exempt Employee: An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(22) Career Service Exempt Position: A position in state service exempted by law from provisions of career service under Section 67-19-15.

(23) Career Service Status: Status granted to employees who successfully complete a probationary period for career service positions.

(24) Category of Work: A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, including:

(i) unit number;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

(b) positions identified by a set of essential functions, including:

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications;

(v) degrees that are required or directly related to the position.

(25) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(26) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(27) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(28) Classification Study: A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(29) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(30) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(31) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(32) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) Detailed Position Record Management Report: A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(34) DHRM: The Department of Human Resource Management.

(35) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.

(36) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

(37) Disciplinary Action: Action taken by management under Rule R477-11.

(38) Dismissal: A separation from state employment for cause under Section R477-11-2.

(39) Dual State Employment: Employees who work for more than one agency and meet the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

(40) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(41) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

(42) Employment Eligibility Verification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(43) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(44) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(45) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(46) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(47) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(48) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(49) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(50) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment, or a complaint by a reporting employee as defined in Section 67-19a-101(4)(c).

(51) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-406 and the rules promulgated by the Career Service Review Office.

(52) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(53) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

(a) safety sensitive functions:

(i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 (January 18, 2006);

(ii) directly related to law enforcement;

(iii) involving direct access or having control over direct access to controlled substances;

(iv) directly impacting the safety or welfare of the general public;

(v) requiring an employee to carry or have access to firearms; or

(b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:

(i) financial assets, liabilities, and account information;

(ii) social security numbers;

(iii) wage information;

(iv) medical history;

(v) public assistance benefits; or

(vi) driver license

(54) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

(55) HRE: Human Resource Enterprise; the state human resource management information system.

(56) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(57) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(58) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(59) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

(60) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

(61) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(62) Job Requirements: Skill requirements defined at the job level.

(63) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(64) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(65) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(66) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(67) Market Comparability Adjustment: Legislatively approved change to a salary range for a job based on a compensation survey conducted by DHRM.

(68) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(69) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(70) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(71) Nonfeasance: Failure to perform either an official duty or legal requirement.

(72) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(73) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(74) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(75) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(76) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(77) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-2 for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(78) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(79) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(80) Position Identification Number: A unique number assigned to a position for FTE management.

(81) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) where a fatality occurs;

(b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

(c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(82) Preemployment Drug Test: A drug test conducted on:

(a) final applicants who are not current employees;

(b) final candidates for a highly sensitive position;

([~~b~~]c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

([e]d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(83) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(84) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(85) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(86) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(87) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(88) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(89) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(90) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

(91) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

(92) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(93) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(94) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(95) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

(96) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

(97) Salary Range: An established minimum salary rate and maximum salary rate assigned to a job.

(98) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

(99) Separation: An employee's voluntary or involuntary departure from state employment.

(100) Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

([~~100~~]101) Tangible Employment Action: A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits.

([~~101~~]102) Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

([~~102~~]103) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

([~~103~~]104) Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

([~~104~~]105) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

([~~105~~]106) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

([~~106~~]107) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

KEY: personnel management, rules and procedures, definitions
Date of Enactment or Last Substantive Amendment: [~~July 2, 2012~~]2013
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6

Human Resource Management, Administration
R477-2
Administration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37562
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments add clarifying language for easier reference and to comply with code.

SUMMARY OF THE RULE OR CHANGE: Categories of those exempted from rules are expanded. Discrimination is added to the title of Section R477-2-3 for easier reference. A subsection is added to clarify compliance with code in regard to public records classification.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-3-1 and Section 63G-5-201 and Section 67-19-18 and Section 67-19-6 and Title 63G, Chapter 2 and Title 63G, Chapter 7

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees because the changes are administrative.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are administrative and have no direct compliance costs.

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♦ 05/30/2013 09:00 AM, Capitol Hill Senate Building, 450 N State Street, Seagull Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-2. Administration.
R477-2-1. Rules Applicability.

These rules apply to the executive branch of Utah State Government and its career and career service exempt employees. Other entities may be covered in specific sections as determined by statute. Any inclusions or exceptions to these rules are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with these rules include:

(1) members of the Legislature and legislative employees;

(2) members of the judiciary and judicial employees;

(3) officers, faculty, and other employees of state institutions of higher education;

(4) officers, faculty, and other employees of the public education system, other than those directly employed by the State Office of Education;

(5) employees of the Office of the Attorney General;

(6) elected members of the executive branch and their employees;

(7) employees of independent entities, quasi-governmental agencies and special service districts;

(8) employees in any position that is determined by statute to be exempt from these rules.

R477-2-2. Compliance Responsibility.

Agencies shall comply with these rules.

(1) The Executive Director, DHRM, may authorize exceptions to these rules where allowed when:

(a) applying the rule prevents the achievement of legitimate government objectives; or

(b) applying the rule infringes on the legal rights of an employee.

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.

(3) In cases of noncompliance with Title 67, Chapter 19, and these rules, the Executive Director, DHRM, may find the responsible agency official to be subject to the penalties under Subsection 67-19-18(1) pertaining to misfeasance, malfeasance or nonfeasance in office.

R477-2-3. Fair Employment Practice and Discrimination.

All state personnel actions shall provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions may not be based on race, religion, national origin, color, gender, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor.

(3) An employee who alleges unlawful discrimination may:

(a) submit a complaint to the agency head; and

(b) file a charge with the Utah Labor Commission Anti-Discrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

(4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

R477-2-4. Control of Personal Service Expenditures.

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Planning and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Changes in job identification numbers, salary ranges, or number of positions listed in the Detailed Position Record Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Detailed Position Record Management Report.

R477-2-5. Records.

Access to and privacy of personnel records maintained by DHRM are governed by Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA) and applicable federal laws. DHRM shall designate and classify the records and record series it maintains under the GRAMA statute and respond to GRAMA requests for employee records.

(1) DHRM shall maintain an electronic record for each employee that contains the following, as appropriate:

(a) Social Security number, date of birth, home address, and private phone number.

(i) This information is classified as private under GRAMA.

(ii) DHRM may grant agency access to this information for state business purposes. Agencies shall maintain the privacy of this information.

(b) performance ratings;

(c) records of actions affecting employee salary history, classification history, title and salary range, employment status and other personal data.

(2) DHRM shall maintain, on behalf of agencies, personnel files.

(3) DHRM shall maintain, on behalf of agencies, a confidential medical file. Confidentiality shall be maintained in accordance with applicable regulations. Information in the medical file is private, controlled, or exempt in accordance with Title 63G-2.

(4) An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative.

(a) An employee may request corrections, amendments to, or challenge any information in the DHRM electronic or hard copy personnel file, through the following process:

(i) The employee shall request in writing to the appropriate agency human resource field office that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

(5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed Title and the authority for the action.

(6) Upon employee separation, DHRM shall retain electronic records for thirty years. Agency hard copy records shall be retained at the agency for a minimum of two years, and then transferred to the State Record Center to be retained according to the record retention schedule.

(7) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel file, medical and I-9 records to the new agency.

(8) An employee who violates confidentiality is subject to disciplinary action and may be personally liable.

(9) Records related to conduct for which an employee may be disciplined under R477-11-1(1) are classified as private records under Subsection 62G-2-302(2)(a).

(i) If disciplinary action under R477-11-1(4) has been sustained and completed and all time for appeal has been exhausted, the documents issued in the disciplinary process are classified as public records under Subsection 63G-2-301(3)(o).

R477-2-6. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a current reference release form for information authorized under Title 63G, Chapter 2, of the Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

R477-2-7. Employment Eligibility Verification (Immigration Reform and Control Act - 1986).

Employees newly hired, rehired, or placed through reciprocity with or assimilation from another career service jurisdiction shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Verification Form I-9 as required under the Immigration Reform and Control Act of 1986.

R477-2-8. Disclosure by Public Officers Supervising a Relative.

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed under Section 52-3-1.

(1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the agency head in accordance with Section 52-3-1.

R477-2-9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to state employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under Title 63G, Chapter 7, the Governmental Immunity Act, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) Before an agency may defend its employee against a claim, the employee shall make a written request for a defense to the agency head within ten calendar days, under Subsection 63G-7-902(2).

R477-2-10. Alternative Dispute Resolution.

Agency management may establish a voluntary alternative dispute resolution program under Chapter 63G, Chapter 5.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
Date of Enactment or Last Substantive Amendment: [~~July 2, 2012~~]2013
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 52-3-1; 63G-2; 63G-5-201; 63G-7; 67-19-6; 67-19-18

Human Resource Management, Administration
R477-4
Filling Positions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37563
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments clarify terms and practices. Recruitment posting practices are changed to speed process.

SUMMARY OF THE RULE OR CHANGE: Career service principles are further explained. Minimum postings for career service recruitments are reduced from 7 to 3 days. Transfers and reassignments affecting longevity status are articulated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Section 67-20-8

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are administrative and have no direct compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or other entities outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. T he only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-4. Filling Positions.
R477-4-3. Career Service Positions.

(1) Selection of a career service employee shall be governed by the following:

(a) DHRM business practices;

(b) career service principles as outlined in R477-2-3 Fair Employment Practice emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;

(c) equal employment opportunity principles;

(d) Section 52-3-1, employment of relatives;

(e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

R477-4-4. Recruitment and Selection for Career Service Positions.

(1) Prior to initiating recruitment, agencies may administer any of the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment within an agency initiated by an employee's reasonable accommodation request under the ADA;

(c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;

(f) reclassification; or

(g) conversion from schedule A to schedule B as authorized by Subsection R477-5-1(3).

(2) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) All recruitment announcements shall include the following:

(i) Information about the DHRM approved recruitment and selection system; and

(ii) opening and closing dates.

(b) Recruitments for career service positions shall be posted for a minimum of [~~seven~~]three calendar days, excluding state holidays.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Management may make appointments according to the following order:

(a) from the reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.

(b) from a hiring list of qualified applicants for the position, or from another process pre-approved by the Executive Director, DHRM.

R477-4-5. Transfer and Reassignment.

(1) Positions may be filled through a transfer or reassignment.

(a) The receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.

(b) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(c) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

(d) A transfer may include a decrease in actual wage.

(e) A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(f) An employee who is transferred or reassigned to a position where the employee's current actual wage is above the salary range maximum of the new position, is considered to be above maximum and is not in longevity. Longevity rules may not apply until the employee has been above the salary range maximum for three years and all other longevity criteria are met.

(2) A reassignment or transfer may include assignment to:

(a) a different job or position with an equal or lesser salary range maximum;

(b) a different work location; or

(c) a different organizational unit.

KEY: employment, fair employment practices, hiring practices
Date of Enactment or Last Substantive Amendment: [~~July 2, 2012~~]2013
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-8

Human Resource Management, Administration
R477-5
Employee Status and Probation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37564
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments change language for clarity and simplification.

SUMMARY OF THE RULE OR CHANGE: Career service exempt employee conversion to career service is clarified as a management decision. Additional language clarifies break in service and probationary periods.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Subsection 67-19-16(5)(b)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
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THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-5. Employee Status and Probation.
R477-5-1. Career Service Status.

(1) Only an employee who is hired through a pre-approved process shall be eligible for appointment to a career service position.

(2) An employee shall complete a probationary period prior to receiving career service status.

(3) Management may convert a[~~A~~] career service exempt employee [~~may only convert~~]to career service status, in a position with an equal or lower salary range to the previous career service position held, when:

(a) the employee previously held career service status with no break in service between the last career service position held and career service exempt status[~~exempt status and the previous career service position~~];

(b) the employee was hired from a hiring list to a schedule A, TL or IN position, in the same job title to which they would convert, as prescribed by Subsection R477-4-8; or

(c) the employee was hired through the Alternative State Application Program (ASAP) and successfully completed a six month on the job examination period.

R477-5-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) An employee shall receive an opportunity to demonstrate competence in a career service position. A performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) During the probationary period, an employee may be separated from state employment in accordance with Subsection R477-11-2(1).

(b) At the end of the probationary period, an employee shall receive a performance evaluation. Evaluations shall be entered into HRE as the performance evaluation that reflects successful or unsuccessful completion of probation.

(2) Each career service position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay, long-term disability, workers compensation leave, temporary transitional assignment, military leave under USERRA, or donated leave from an approved leave bank.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period unless there is a break in service.

(3) An employee in a career service position who works at least 50% of the regular work schedule or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) An employee serving probation in a career service position may be transferred, reassigned or promoted to another career service position. Each new appointment shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. [~~If an agency determines that a new probationary period is needed, it~~]The probationary period shall be the full probationary period defined in the job description of the new position.

R477-5-3. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, personnel management, state employees
Date of Enactment or Last Substantive Amendment: [~~July 1, 2010~~]2013
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-16(5)(b)

Human Resource Management, Administration
R477-6
Compensation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37565
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments add language to various application of rules for consistency and clarity in application. Medical insurance changes are made to more clearly align with law.

SUMMARY OF THE RULE OR CHANGE: The amendments: clarify application of longevity rules; clarify application of wage decreases in a transfer; and clarify the amount of decrease allowed in a career mobility. Provisions for enrolling or declining medical insurance are changed in accordance with law. Tier II retirement election is extended to one year.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63F-1-106 and Section 67-19-12 and Section 67-19-12.5 and Section 67-19-6 and Subsection 67-19-15.1(4)

ANTICIPATED COST OR SAVINGS TO:
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COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are administrative and have no direct compliance costs.

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THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-6. Compensation.
R477-6-4. Salary.

(1) Merit increases. The following conditions apply if merit pay increases are authorized and funded by the legislature:

(a) Employees, classified in position schedule B, shall be eligible for the merit increase if the following conditions are met:

(i) Employee may not be in longevity.

(ii) Employee may not be paid at the maximum of their salary range.

(iii) Employee has received a minimum rating of successful on their most recent performance evaluation, which shall have been within the previous twelve months.

(iv) Employee has been in a paid status by the state for at least six months at the beginning of the new fiscal year.

(b) Employees designated as schedule AA, AQ and AU are not eligible for merit increases.

(c) All other position schedules will be reviewed by DHRM in consultation with the Governor's Office to determine if they are eligible for merit increases.

(2) Promotions.

(a) An employee, except for those designated schedule IN or TL, promoted to a position with a salary range maximum exceeding the employee's current salary range maximum shall receive a salary increase of at least 5%.

(b) An employee may not be placed higher than the maximum or lower than the minimum in the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-4(4).

(c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

(3) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a position with a salary range maximum exceeding the employee's current salary range maximum may receive a pay rate increase of at least 1/2% or the salary range maximum rate.

(b) An employee may not be placed higher than the maximum or lower than the minimum in the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-4(4).

(c) An employee whose position is reclassified to a position with a lower salary range shall retain the current salary. The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.

(4) Longevity.

(a) An employee shall receive a longevity increase of 2.75% when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous; and

(ii) the employee has been at the maximum of the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(b) An employee in longevity shall be eligible for the same across the board pay plan adjustments authorized for all other employee pay plans.

(c) An employee in longevity shall only be eligible for an additional 2.75% increase every three years. To be eligible, an employee shall receive a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(d) An employee in longevity who is reclassified or reassigned to a position with a lower salary range shall retain the current actual wage.

(e) An employee in longevity who is promoted or reclassified to a position with a higher salary range shall only receive a salary increase if the current actual wage is less than the salary range maximum of the new position. The salary increase shall be at least 1/2% or the range maximum rate of the new position.

(f) Employees who are not in longevity and are reclassified, transferred or reassigned and have a current actual wage that is above the salary range maximum of the new position are considered to be above maximum and are not in longevity. Longevity rules may not apply until the employee has been above the salary range maximum for three years and all other longevity criteria are met.

(g) Employees in Schedules AB, IN, [~~AH,~~]or TL are not eligible for the longevity program.

(5) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes, may not receive an adjustment in the current actual wage.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in an increase in the current actual wage unless the employee is below the minimum of the new range.

(c) An employee whose position is changed by administrative adjustment to a position with a lower salary range shall retain the current salary. The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.

(6) Reassignment.

An employee's current actual wage may not be lowered except when provided in federal or state law. Wage rate decreases shall be at least 1/2% or the minimum rate in the salary range.

(7) Transfer.

Management may decrease the current actual wage of an employee who transfers to another position with a lower salary range maximum. Wage rate decreases shall be at least 1/2% or the minimum rate in the salary range.

(8) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or the minimum rate of the new position's salary range as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the reduction in the current actual wage.

(9) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or the maximum rate of the salary range.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for Administrative Salary Increases shall be:

(i) in writing;

(ii) approved by the agency head or designee;

(iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. Wage rate increases shall be at least 1/2% or the maximum rate of the salary range. These increases alone do not constitute successful completion of probation or the granting of career service status.

(f) An employee at the salary range maximum or in longevity may not be granted administrative salary increases.

(10) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) The final salary may not be less than the minimum of the salary range.

(b) Wage rate decreases shall be at least 1/2% or the minimum rate of the salary range.

(c) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(11) Career Mobility.

(a) Agencies may offer an employee on a career mobility assignment a salary increase or [~~salary~~]decrease [~~by any amount~~]of at least 1/2% within the new salary range.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same salary rate and the same or higher salary range that the employee would have received without the career mobility assignment.

(12) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage rate increases or decreases.

R477-6-6. Employee Benefits.

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has [~~60~~]30 days from the hire date to enroll in or decline [~~a~~]one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the HSA-qualified medical insurance plans.

(a) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

(b) An employee with previous medical coverage shall provide a certificate of credible coverage to the state's health care provider which states dates of eligibility for the employee, and the employee's dependents in order to have a preexisting waiting period reduced or waived.

(i) An eligible employee or dependent under the age of 19 may not be required to meet any preexisting waiting period.

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible

employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has [~~30 days~~]one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

KEY: salaries, employee benefit plans, insurance, personnel management
Date of Enactment or Last Substantive Amendment: [~~July 10, 2012~~]2013
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)

Human Resource Management, Administration
R477-7
Leave

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37566
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments are made to remove unnecessary language and to clarify leave usage practices. Clarifications are made to provisions for reemployed retirees. Some reformatting for simplicity and replacement of outdated terms are included in amendments. Unnecessary language is also removed. Language assuring DHRM support for agency heads is added to dealing with long term disability leave. Language is added to require policies for any leave bank program.

SUMMARY OF THE RULE OR CHANGE: In Section R477-7-1, compensatory and excess time are removed. Language is added to prohibit usage of leave before it is accrued and to prohibit accrual of excess hours during leave, except jury leave. Language is added and removed in Subsection R477-7-5(8) regarding reemployment of retirees. Language adding DHRM consultation is added to Section R477-7-17, Long Term Disability leave. Section R477-7-19 adds and removes language regarding leave bank policies.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34-43-103 and Section 63G-1-301 and Section 67-19-12.9 and Section 67-19-14 and Section 67-19-14.2 and Section 67-19-14.4 and Section 67-19-14.5 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees because the changes are administrative.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are administrative and have no direct compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. T he only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/30/2013 09:00 AM, Capitol Hill Senate Building, 450 N State Street, Seagull Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-7. Leave.
R477-7-1. Conditions of Leave.

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working at least 40 hours per pay period.

(2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.

(3) An employee shall use leave in no less than quarter hour increments.

(4) An employee may not use annual, sick, converted sick, [~~compensatory, excess~~]or holiday leave before accrued. Leave accrued during a pay period may not be used until the following pay period.

(5) An employee may not use [~~compensatory,~~]annual leave, converted sick leave used as annual leave, or use excess or compensatory hours[~~leave~~] without advance approval by management.

(6) An employee may not use any type of leave except jury leave to accrue excess hours.

(7) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

([~~7~~]8) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.

(a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.

(b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

(c) Annual, sick and holiday leave may not be used or accrued after the last day worked, except for:

(i) leave without pay;

(ii) administrative leave specifically approved by management to be used after the last day worked;

(iii) leave granted under the FMLA; or

(iv) leave granted for other medical reasons that was approved prior to the commencement of the leave period.

([~~8~~]9) After six months cumulative from the first day of absence from or inability to perform the regular position, the employee shall be separated from employment regardless of paid leave status unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

([~~9~~]10) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-5. Converted Sick Leave.

An employee may convert sick leave hours to converted sick leave after the end of the last pay period of the calendar year in which the employee is eligible.

(1)(a) Converted sick leave hours accrued prior to January 1, 2006 shall be Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall be Program II converted sick leave hours.

(2) To be eligible, an employee shall have accrued a total of 144 hours or more of sick leave in Program I and Program II combined at the beginning of the first pay period of the calendar year.

(a) At the end of the last pay period of a calendar year in which an employee is eligible, all unused sick leave hours accrued that year in excess of 64 shall be converted to Program II converted sick leave.

(b) The maximum hours of converted sick leave an employee may accrue in Program I and Program II combined is 320.

(c) If the employee has the maximum accrued in converted sick leave, these hours will be added to the annual leave account balance.

(d) In order to prevent or reverse the conversion, an employee shall:

(i) notify agency management no later than the last day of the last pay period of the calendar year in order to prevent the conversion; or

(ii) notify agency management no later than the end of February in order to reverse the conversion.

(e) Upon separation, an eligible employee may convert any unused sick leave hours accrued in the current calendar leave year in excess of 64 to converted sick leave hours in Program II.

(3) An employee may use converted sick leave as annual leave or as regular sick leave.

(4) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

(5) Employees retiring from LTD who have converted sick leave balances still intact may use these hours for the unused converted sick leave retirement program at the time they become eligible for retirement.

(6) Upon retirement, 25% of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(a) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the employees PEHP health reimbursement account under Subsection R477-7-6(6)(b) if the converted sick leave was accrued in Program II.

(7) Upon retirement, Program I converted sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments.

(8) A r[~~R~~]etired employee[~~s~~] who reemploys in a benefited position with the state after being separated for a continuous year after the retirement date, and who chooses to suspend pension, [~~in a benefitted position will~~]shall have a new benefit calculated on any new Program II converted sick leave hours accrued for the new period of employment, upon subsequent retirement[~~, for the new period of employment~~]. The employee shall be reemployed for at least two years before receiving this benefit.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, an employee shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system shall become eligible for this benefit when actively retiring with Utah Retirement Systems.

(2) An employee in the Tier II defined contribution system shall become eligible when terminating employment on or after the retirement date established by the Utah Retirement Systems. This date reflects service time accrued by the employee as if the employee were in the Tier II hybrid retirement system.

(3)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued on or after January 1, 2006 shall be Program II sick leave hours.

(4) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency shall notify all employees at least 60 days before the new fiscal year begins.

(5) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employees 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(5)(b)(i) shall be used to provide the following benefit.

(iii) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until the employee reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(iv) When the employee becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(vi) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(vii) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance under Section 67-19-14.3.

(b) Employees retiring from LTD who have sick leave balances still intact may use these hours for the unused sick leave retirement program at the time they become eligible for retirement.

(c) Upon retirement, Program I sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments.

(6) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(5)(b)(ii) shall be deposited in the employee's PEHP health reimbursement account at the greater of:

(i) the employee's rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

(c) A r[~~R~~]etired employee[~~s~~] who reemploys in a benefited position with the state [~~in a benefited position~~]after being separated for a continuous year after the retirement date, and who chooses to suspend pension, shall[~~will~~] have a new benefit calculated on any new Program II sick leave hours accrued for the new period of employment, upon subsequent retirement[~~, for the new period of employment~~]. The employee shall be reemployed for at least two years before receiving this benefit.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to one day per occurrence;

(ii) administrative leave in excess of one day may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.

(d) [~~student~~]employee education[~~al~~] assistance.

([e]2) An employee [~~who satisfies the criteria in this subsection~~]shall be granted up to two hours of administrative leave to vote in an official election if the employee[~~:~~

~~(i) The employee shall:~~

~~(A) have~~] has fewer than three total hours off the job between the time the polls open and close, and[~~;~~] the employee[

~~(B) apply~~] applies for the [~~time~~]leave at least [~~in the previous~~] 24 hours in advance.

([~~ii~~]a) Management may specify the hours when the employee may be absent.

([~~f~~]3) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

([~~2~~]4) With the exception of administrative leave used as a reward, under Subsection R477-7-7(1)(c), the agency head or designee may grant paid administrative leave.

([~~3~~]5) Administrative leave taken shall be documented in the employee's leave record.

R477-7-8. Jury Leave.

(1) An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.

(3) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

([~~3~~]4) An employee choosing to use accrued leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency finance or agency payroll [~~clerks~~]staff for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the unit where the salary is recorded.

R477-7-17. Long Term Disability Leave.

(1) An employee who is determined eligible for the Long Term Disability Program (LTD) may be granted up to six months of leave cumulative from the first day of absence or inability to perform the regular position as the result of health conditions, unless documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last-held regular position. Exceptions to the six months may be granted by the agency head in consultation with DHRM.

(a) For LTD qualifying purposes, the medical leave begins on the day after the last day the employee worked in the employee's regular position. LTD requires a waiting period before benefit payments begin.

(b) An employee determined eligible for Long Term Disability benefits shall be eligible for health insurance benefits the day after the last day worked or the last day of FMLA leave.

(i) If the employee elects to continue health insurance coverage, the health insurance premiums shall be equal to 102% of the regular active premium beginning on the day after the last day worked. The employee is responsible for 10% of the health insurance premium during the first year of disability, 20% during the second year of disability, and 30% thereafter until the employee is no longer covered by the long term disability program. If the employee has a lapse of creditable coverage for more than 62 days, pre-existing condition exclusions shall apply.

(c) Upon approval of the LTD claim:

(i) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(ii) The employee shall be paid for remaining balances of annual leave, excess hours, and compensatory hours earned by FLSA non-exempt employees in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. Upon return to work from an approved leave of absence, the employee has the option of buying back annual leave at the current hourly rate.

(iii) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(iv) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14.

(v) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14.2.

(2) An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) Conditions for return from long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(b) After six months of cumulative absence from or inability to perform the regular position, the employee shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head.

(4) An employee who files a fraudulent long term disability claim shall be disciplined under Rule R477-11.

(5) Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

R477-7-19. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program.

(1) A leave bank program shall include a policy with the following[~~as follows~~]:

([~~1~~]a) Only compensatory time earned by an FLSA nonexempt employee, annual leave, excess hours, [~~compensatory time earned by an FLSA nonexempt employee,~~]and converted sick leave hours may be donated to a leave bank.

([~~2~~]b) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

([~~3~~]c) An employee may not receive donated leave until all individually accrued leave is used.

([~~4~~]d) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

([~~5~~]e) Employees using donated leave may not work a second job without written consent of the agency head.

R477-7-20. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: holidays, leave benefits, vacations
Date of Enactment or Last Substantive Amendment: [~~July 2, 2012~~]2013
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 34-43-103; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14; 67-19-14.2; 67-19-14.4; 7-19-14.5

Human Resource Management, Administration
R477-8
Working Conditions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37567
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments are made to eliminate confusion and assure compliance with Fair Labor Standards Act and existing Utah Code. Some formatting is simplified. Procedural requirements are changed for consistency across agencies. Clarifying language and relative law is referenced with regard to reasonable accommodation for more detailed direction.

SUMMARY OF THE RULE OR CHANGE: Section R477-8-1 is changed to redefine work week and place limitations. Formatting is simplified. Language establishes DHRM with responsibility to establish compensatory time limits for FLSA exempt employees. Clarifying language is added to Section R477-8-13. Clarifying language and relative law is referenced with regard to reasonable accommodation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 20A-3-103 and Section 67-19-6 and Section 67-19-6.7

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees because the changes are administrative.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are administrative and have no direct compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/30/2013 09:00 AM, Capitol Hill Senate Building, 450 N State Street, Seagull Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-8. Working Conditions.
R477-8-1. Work Period.

(1) The state's standard work week begins Saturday at 12:00am and ends the following Friday at 11:59pm. FLSA nonexempt employees may not deviate from this work week.[~~Agencies may implement alternative work schedules from among those approved by the Executive Director, DHRM.~~]

(2) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt [~~extended~~]alternative business hours under Section 67-25-201[~~to enhance service to the public~~].

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

R477-8-5. Compensatory Time for FLSA Nonexempt Employees.

(1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero in the same pay period that the employee is:

(i) transferred from one agency to a different agency[~~;~~]; or

(ii) promoted,[~~;~~

~~(iii)~~] reclassified,[~~;~~

~~(iv)~~] reassigned[~~:~~] or[

~~(v)~~] transferred to an FLSA exempt position.

(c) The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

R477-8-6. Compensatory Time for FLSA Exempt Employees.

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) DHRM shall establish the limit on compensatory time earned by an FLSA exempt employee.

(i) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

([~~b~~]c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

([~~c~~]d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency; or

(iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

([~~d~~]e) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

([e]f) [~~The agency head may approve overtime for career service exempt deputy and division directors, but overtime may not be compensated with actual payment.~~]Schedule AB employees may not be compensated for compensatory time except with time off.

R477-8-7. Nonexempt Public Safety Personnel.

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

(a) be a uniformed or plain clothes sworn officer;

(b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes;

(c) have the power to arrest;

(d) be POST certified or scheduled for POST training; and

(e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(a) 171 hours in a work period of 28 consecutive days; or

(b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(a) 212 hours in a work period of 28 consecutive days; or

(b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(a) the Fair Labor Standards Act, Section 207(k);

(b) 29 CFR 553.230;

(c) the state's payroll period; and

(d) the approval of the Executive Director, DHRM.

R477-8-8. Time Reporting.

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

(a) approved and unapproved overtime;

(b) on-call time;

(c) stand-by time;

(d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

(e) approved leave time.

(2) An employee who fails to accurately record time may be disciplined.

(3) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(4) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, DHRM or designee[~~, of the Department of Human Resource Management~~].

R477-8-13. Excess Hours.

(1) An employee may use excess hours the same way as annual leave.

(a) Agency management shall approve the accrual of excess hours before the work is performed.

(b) Agency management may deny the use of any leave time, other than holiday and jury leave, that results in an employee accruing excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management shall pay out excess hours:

(i) for all hours accrued above the limit set by DHRM;

(ii) when an employee is assigned from one agency to another; and

(iii) upon separation.

(e) Agency management may pay out excess hours:

(i) automatically in the same pay period accrued;

(ii) at any time during the year as determined appropriate by a state agency or division; or

(iii) upon request of the employee and approval by the agency head.

R477-8-15. Reasonable Accommodation.

Employees and applicants seeking reasonable accommodation shall be evaluated under the criteria of the Americans with Disabilities Act Amendments Act of 2008 (42 U.S.C.A. 12101). This shall be done in conjunction with the agency ADA coordinator. The ADA coordinator shall consult with the Division of Risk management prior to denying any accommodation request.[~~Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.~~]

KEY: breaks, telecommuting, overtime, dual employment
Date of Enactment or Last Substantive Amendment: [~~July 2, 2012~~]2013
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-6.7; 20A-3-103

Human Resource Management, Administration
R477-9
Employee Conduct

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37568
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A new section is added to comply with Whistleblower Amendments in S.B. 95 (2013 General Session). Outdated terms are replaced.

SUMMARY OF THE RULE OR CHANGE: The term "termination" is replaced by "dismissal". The term "corrective action" is replaced with "performance improvement plan". A new Section R477-9-5, Employee Reporting Protections is added.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-7-2 and Section 67-19-19 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees because the changes are administrative.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are administrative and have no direct compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or other entities outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/30/2013 09:00 AM, Capitol Hill Senate Building, 450 N State Street, Seagull Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-9. Employee Conduct.
R477-9-1. Standards of Conduct.

An employee shall comply with the standards of conduct established in these rules and the policies and rules established by agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full time for which they are compensated.

(a) An employee shall:

(i) comply with the standards established in the individual performance plans;

(ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent the employee from performing their job effectively and safely;

(iv) inform the supervisor of any unclear instructions or procedures.

(2) An employee shall make prudent and frugal use of state funds, equipment, buildings, time, and supplies.

(3) An employee who reports for duty or attempts to perform the duties of the position while under the influence of alcohol or other intoxicant, including use of illicit drugs, nonprescribed controlled substances, and misuse of volatile substances, shall be subject to corrective action or discipline in accordance with Section R477-10-2, Rule R477-11 and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with Section 63G-7-2 of the Utah Governmental Immunity Act.

(4) An employee may not drive a state vehicle or any other vehicle, on state time, while under the influence of alcohol or controlled substances.

(a) An employee who violates this rule shall be subject to [~~corrective action~~]a performance improvement plan or discipline under Section R477-10-2, Rules R477-11 and R477-14.

(b) The agency may decline to defend or indemnify an employee who violates this rule, according to Subsection 63G-7-202(3)(c)(ii) of the Utah Governmental Immunity Act.

(5) An employee shall provide the agency with a current personal mailing address.

(a) The employee shall notify the agency in writing of any change in address.

(b) Mail sent to the current address on record shall be deemed to be delivered for purposes of these rules.

R477-9-4. Political Activity.

A state employee may voluntarily participate in political activity, except as restricted by this section or the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508.

(1) The federal Hatch Act restricts the political activity of state government employees who work in connection with federally funded programs.

(a) State employees in positions covered by the Hatch Act may run for public office in nonpartisan elections, campaign for and hold office in political clubs and organizations, actively campaign for candidates for public office in partisan and nonpartisan elections, contribute money to political organizations, and attend political fundraising functions.

(b) State employees in positions covered by the federal Hatch Act may not be candidates for public office in a partisan election, use official authority or influence to interfere with or affect the results of an election or nomination, or directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(c) Prior to filing for candidacy, a state employee who is considering running for a partisan office shall submit a statement of intent to become a candidate to the agency head.

(i) The agency head shall consult with DHRM.

(ii) DHRM shall determine whether the employee's intent to become a candidate is covered under the Hatch Act.

(iii) Employees in violation of section R477-9-4(1)(c) may be disciplined up to [~~termination~~]dismissal[~~ of their employment~~].

(d) If a determination is made that the employee's position is covered by the Hatch Act, the employee may not run for a partisan political office.

(i) If it is determined that the employee's position is covered by the Hatch Act, the state shall dismiss the employee if the employee files for candidacy.

(2) Any state employee elected to any partisan or full-time nonpartisan political office shall be granted a leave of absence without pay for times when monetary compensation is received for service in political office. An employee may not use annual leave while serving in a political office.

(3) During work time, no employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, a state employee may voluntarily contribute to any party or any candidate.

(4) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions may not be based on partisan political activity.

R477-9-5. Employee Reporting Protections.

(1) Under Section 67-21-9, an agency may not adversely affect the employment conditions of an employee who communicates in good faith, and in accordance with statute:

(a) waste or misuse of public property, manpower, or funds;

(b) gross mismanagement;

(c) unethical conduct;

(d) abuse of authority; or

(e) violation of law, rule, or regulations.

R477-9-6. Employee Indebtedness to the State.

(1) An employee indebted to the state because of an action or performance in official duties may have a portion of salary that exceeds the minimum federal wage withheld. Overtime salary shall not be withheld.

(a) The following three conditions shall be met before withholding of salary may occur:

(i) The debt shall be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee shall know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the salary.

(iii) An employee shall be notified of this rule which allows the state to withhold salary.

(b) An employee separating from state service will have salary withheld from the last paycheck.

(c) An employee going on leave without pay for more than two pay periods may have salary withheld from their last paycheck.

(d) The state may withhold an employee's salary to satisfy the following specific obligations:

(i) travel advances where travel and reimbursement for the travel has already occurred;

(ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) evidence that the employee negligently caused loss or damage of state property;

(iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) overpayment of salary determined by evidence that an employee did not work the hours for which they received salary or was not eligible for the benefits received and paid for by the state;

(vii) excessive reimbursement of funds from flexible reimbursement accounts;

(viii) other obligations that satisfy the requirements of Subsection R477-9-5(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477-9-[6]7. Acceptable Use of Information Technology Resources.

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

(1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.

(2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to Rule R477-11.

R477-9-[7]8. Personal Blogs and Social Media Sites.

(1) An employee who participates in blogs and social networking sites for personal purposes may not:

(a) claim to represent the position of the State of Utah or an agency;

(b) post the seal of the State of Utah, or trademark or logo of an agency;

(c) post protected or confidential information, including copyrighted information, confidential information received from agency customers, or agency issued documents without permission from the agency head; or

(d) unlawfully discriminate against, harass or otherwise threaten a state employee or a person doing business with the State of Utah.

(2) An agency may establish policy to supplement this section.

(3) An employee may be disciplined according to R477-11 for violations of this section or agency policy.

R477-9-[8]9. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management
Date of Enactment or Last Substantive Amendment: [~~July 2, 2012~~]2013
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 63G-7-2; 67-19-6; 67-19-19

Human Resource Management, Administration
R477-10-3
Employee Development and Training

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37569
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A subsection is removed from this rule and placed into Rule R477-15 for better alignment.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-10-3(1) is removed. This subsection specifically addresses workplace harassment. The content of this section is placed into Rule R477-15, which addresses workplace harassment prevention.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are administrative and have no direct compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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HUMAN RESOURCE MANAGEMENT
ADMINISTRATION

ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/30/2013 09:00 AM, Capitol Hill Senate Building, 450 N State Street, Seagull Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-10. Employee Development.
R477-10-3. Employee Development and Training.
[~~(1) Agencies shall provide training to their employees on the prevention of workplace harassment.~~
~~(a) The curriculum shall be approved by DHRM and the Division of Risk Management.~~
~~(b) After initial training all agencies shall provide updated or refresher training to employees every two years.~~
~~(c) Training shall be developed and provided by qualified individuals.~~
~~(d) Agencies shall keep records of the training, including who provided the training, who attended the training and when they attended it.~~
] ([~~2~~]1) Agency management may establish programs for training and staff development that shall be agency specific or designed for highly specialized or technical jobs and tasks.

([~~3~~]2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

([~~4~~]3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

([~~5~~]4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs.

([~~6~~]5) Agencies are required to provide refresher training and make reasonable efforts to requalify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

KEY: educational tuition, employee performance evaluations, employee productivity, training programs
Date of Enactment or Last Substantive Amendment: [~~July 1, 2010~~|2013
Notice of Continuation: February 3, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6[~~; 67-19-12.4~~]

Human Resource Management, Administration
R477-11
Discipline

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37570
FILED: 04/30/2013

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments add reference to the Utah Code and replace terminology to prevent confusion.

SUMMARY OF THE RULE OR CHANGE: The Utah Code references are added to identify grievance and appeal exceptions in disciplinary actions. Language is changed clarifying an employee's right to be heard in a meeting, not necessarily a formal hearing.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
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COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel

Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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♦ 05/30/2013 09:00 AM, Capitol Hill Senate Building, 450 N State Street, Seagull Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, or nonfeasance;

(f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position;

(h) conduct, on or off duty, which creates a conflict of interest with the employee's public responsibilities or impacts that employee's ability to perform job assignments;

(i) failure to advance the good of the public service, including conduct on or off duty which demeans or harms the effectiveness or ability of the agency to fulfill its mission;

(j) dishonesty; or

(k) misconduct.

(2) Agency management shall consult with DHRM prior to disciplining an employee

(a) DHRM shall consult with the Office of the Attorney General, if necessary, prior to agency management imposing discipline on an employee that is grievable to the Career Service Review Office.

(3) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline, the underlying reasons supporting the intended action, and the right to reply within five working days.

(b) The employee's reply shall be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to reply or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(4) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following forms of disciplinary action:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion of any employee, in accordance with Section R477-11-2, through one of the following actions:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and shall receive a reduction in the current actual wage.

(ii) An employee's current actual wage may be lowered within the current salary range, as determined by the agency head or designee.

(d) dismissal in accordance with Section R477-11-2.

(5) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, under Subsection 67-19-18(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same current actual wage.

(6) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(7) Disciplinary actions are subject to the grievance and appeals procedure by law for career service employees[~~only~~], except under Section 67-19a-402.5. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause under Subsection R477-10-2(3)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a probationary employee or career service exempt employee without right of appeal, except under Sections 67-21-2 and 67-19a-402.5. Such dismissal or demotion may be for any reason or for no reason.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee shall reply within five working days for the agency head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. [~~The~~]This [~~hearing~~]meeting [~~before the agency head or designee~~]shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the [~~hearing~~]meeting the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the [~~hearing~~]meeting. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Section 63G-2-3.

(d) Following the [~~hearing~~]meeting, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. Specific reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(i) the agency head or representative need only consider those cases decided under the administration of the current agency head. Decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards.

(ii) In determining consistent application of rules and standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used for comparison purposes in hearings wherein the consistent application of rules and standards is at issue.

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;

(e) prior disciplinary/corrective actions;

(f) previous oral warnings, written warnings and discussions;

(g) the employee's past work record;

(h) the effect on agency operations;

(i) the potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
Date of Enactment or Last Substantive Amendment: [~~July 2, 2012~~]2013
Notice of Continuation: February 3, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3

Human Resource Management, Administration
R477-12
Separations

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37571
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments add clarifying language and consistent terminology.

SUMMARY OF THE RULE OR CHANGE: The new language clarifies that career service employees separated in a RIF are given preferential consideration in the application score on a hiring list. The term "termination" is replaced by "separation," consistent throughout rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-17 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees because the changes are administrative.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are administrative and have no direct compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or other entities outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/30/2013 09:00 AM, Capitol Hill Senate Building, 450 N State Street, Seagull Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-12. Separations.
R477-12-1. Resignation.

A career service employee may resign or retire by giving written or verbal notice to the supervisor or an appropriate representative of management in the work unit.

(1) Agency management shall accept an employee's notice of resignation or retirement without prejudice when received at least two weeks before its effective date.

(2) After giving a notice of resignation or retirement, an employee may withdraw it on the next working day by notifying the supervisor or an appropriate representative of management in the work unit.

(a) If the withdrawal notice is verbal, the employee shall submit a written notification within 24 hours of the verbal notice.

(b) After the close of the next working day following submission, withdrawal of a resignation or retirement may occur only with the consent of agency management.

R477-12-2. Abandonment of Position.

An employee who is absent from work for three consecutive working days without approval shall be considered to have abandoned the position and to have resigned from the employing agency.

(1) An employee who has abandoned his position may be separated from state employment. Management shall inform the employee of the action in writing.

(a) The employee shall have the right to appeal to the agency head within five working days of receipt or delivery of the notice of abandonment to the last known address.

(b) If the separation is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force (RIF) shall be governed by DHRM rules and business practices.

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed by the Executive Director, DHRM, or designee and approved by Agency Head or designee. The following items shall be addressed in the WFAP:

(a) the categories of work to be eliminated, including positions impacted through bumping;

(b) a decision by agency management allowing or disallowing bumping;

(c) specifications of measures taken to facilitate the placement of affected employees through reassignment, transfer and relocation to vacant positions for which the employee qualifies;

(d) job-related criteria as identified in Subsection R477-12-3(3)(a) used for determining retention points; and

(e) When more than one employee is affected, employees shall be listed in order of retention points.

(f) Retention points do not have to be calculated for a single incumbent WFAP.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity to be heard by the agency head or designee may be RIF'd.

(b) An employee covered by USERRA shall be identified, assigned retention points, and notified of the RIF in the same manner as a career service employee.

(3) Retention points shall be determined for all affected employees within a category of work by giving appropriate

consideration for proficiency and seniority with proficiency being the primary factor.

(a) Performance evaluations and performance information for the past three years may be taken into account for assessing job proficiency.

(b) Seniority shall be determined by the length of most recent continuous career service, which commenced in a career service position for which the probationary period was successfully completed.

(i) Exempt service time subsequent to attaining career service tenure with no break in service shall be counted for purposes of seniority.

(c) In each WFAP, agency management shall develop the criteria they will use for determining retention points.

(i) Agency Management shall consult with Executive Director, DHRM or designee.

(ii) Agency plans shall comply with current DHRM business practices.

(4) The order of separation shall be:

(a) temporary employees in schedule IN or TL positions;

(b) probationary employees; then

(c) career service employees with the lowest retention points.

(5) An employee, including one covered under USERRA, who is separated due to a RIF shall be given formal written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) An employee notified of separation due to a RIF may appeal to the agency head by submitting a written notice of appeal within 20 working days after the receipt of written notification of separation.

(a) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Office.

(7) A career service employee who is separated in a RIF shall be governed by the rules in place at the time of separation.

(8) A career service employee who is separated in a RIF shall be given preferential consideration [~~during the application process~~]to the application score in the process of developing the hiring list as outlined in DHRM business practices when applying for a career service position.

(a) Preferential consideration shall end once the RIF'd individual accepts a career service position.

(b) A RIF'd individual may be rehired under Section R477-4-7.

(c) At agency discretion, an individual rehired to a career service position may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(9) A career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause under these rules, shall be given preferential consideration as outlined in Subsection R477-12-3(8).

(10) Prior to [~~termination~~]separation and in lieu of a RIF, management may reassign an employee to a vacant career service position for which the employee qualifies under Section R477-4-5.

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: administrative procedures, employees' rights, grievances, retirement
Date of Enactment or Last Substantive Amendment: [~~July 1, 2011~~]2013
Notice of Continuation: February 3, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-17; 67-19-18

Human Resource Management, Administration
R477-13
Volunteer Programs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37572
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment adds language to comply with Section 67-20-4.

SUMMARY OF THE RULE OR CHANGE: Language is added to require Executive Director approval for volunteer service, as required under Section 67-20-4.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Section 67-20-3 and Section 67-20-4 and Section 67-20-8

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are administrative and have no direct compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or

any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/30/2013 09:00 AM, Capitol Hill Senate Building, 450 N State Street, Seagull Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-13. Volunteer Programs.
R477-13-1. Volunteer Programs.

(1) Agency management may establish a volunteer program.

(a) A volunteer program shall include:

(i) documented agreement of the type of work and duration for which the volunteer services will be provided;

(ii) orientation to the conditions of state service and the volunteer's specific assignments;

(iii) adequate supervision of the volunteer; and

(iv) documented hours worked by a volunteer.

(2) A volunteer may not donate any service to an agency unless the volunteer's services are approved by the agency head or designee, and by DHRM.

(a) Agency management shall approve all work programs for volunteers before volunteers serve the state or any agency or subdivisions of the state.

(3) A volunteer is considered a government employee for purposes of workers' compensation, operation of motor vehicles or equipment, if properly licensed and authorized to do so, and liability protection and indemnification.

(4) The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, administrative rules, rules and procedures, volunteers
Date of Enactment or Last Substantive Amendment: [~~July 2, 2012~~]2013
Notice of Continuation: February 3, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-3; 67-20-4; 67-20-8

Human Resource Management, Administration
R477-14
Substance Abuse and Drug-Free Workplace

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37573
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment adds a missing conjunction and adds clarifying language to distinguish employees from applicants in preemployment drug testing.

SUMMARY OF THE RULE OR CHANGE: The conjunction added is an "or" consistent with intent. A new subsection is added for applicant preemployment drug testing. Similar language is removed from the subsection addressing current employees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-34 and Section 67-19-35 and Section 67-19-38 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
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COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are administrative and have no direct compliance costs.

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♦ 05/30/2013 09:00 AM, Capitol Hill Senate Building, 450 N State Street, Seagull Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-14. Substance Abuse and Drug-Free Workplace.
R477-14-1. Rules Governing a Drug-Free Workplace.

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effects of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute, use or be under the influence of any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of $25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Final applicants, who are not current employees, may be subject to preemployment drug testing at agency discretion, except as required by law.

(7) Employees are subject to one or more of the following drug or alcohol tests:

(a) reasonable suspicion;

(b) critical incident;

(c) post accident;

(d) return to duty; and

(e) follow up.

([~~7~~]8) Final [~~applicants for highly sensitive positions, or employees who are final~~]candidates for[,] transfer [~~to,~~]or[~~are~~] promot[~~ed~~]ion to a highly sensitive position are subject to preemployment drug testing at agency discretion, except as required by law.

(a) An employee transferring or promoted from one highly sensitive position to another highly sensitive position is subject to preemployment drug testing at agency discretion except as required by law.

(b) An employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position is not subject to preemployment drug testing.

([8]9) Employees in highly sensitive positions, as designated by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

([9]10) This rule incorporates by reference the requirements of 49 CFR 40.87 (2003).

([~~10~~]11) The State of Utah will use a blood alcohol concentration level of .04 for safety sensitive positions and .08 for all other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

([~~11~~]12) Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and

conduct training on these requirements as outlined in the current federal regulation and the DHRM Drug and Alcohol Testing Manual.

([~~12~~]13) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, shall be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than the applicable federal cut off level.

([~~13~~]14) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level when tested before, during or after performing highly sensitive duties, are subject to discipline.

([~~14~~]15) Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee is unable to perform assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

R477-14-2. Management Action.

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include dismissal.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. See Section 67-19-33.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

(a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of $25,000.00; or

(b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be provided the opportunity for a last chance agreement and be required to agree to participate, at the employee's expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee shall sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Section 63G-2-3.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in the previously held position, or a position with a comparable or lower salary range.

(7) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

(8) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(9) An employee who is convicted for a violation under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system;

(ii) other sources;

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-3. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees
Date of Enactment or Last Substantive Amendment: [~~July 1, 2011~~]2013
Notice of Continuation: November 4, 2011
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 67-19-34; 67-19-35; 63G-2-3; 67-19-38

Human Resource Management, Administration
R477-15
Workplace Harassment Prevention Policy and Procedure

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37574
FILED: 04/30/2013

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments attempt to simplify and consolidate harassment prevention rules.

SUMMARY OF THE RULE OR CHANGE: Section R477-15-2 is collapsed into the previous section. Some wording is deleted or rearranged for simplification. Section R477-15-7 (renumbered to Section R477-15-6) is rewritten to include language being removed from Section R477-10-3 concerning harassment prevention.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-18 and Section 67-19-6 and Title 63G, Chapter 2

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
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THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Debbie Cragun, Acting Executive Director

R477. Human Resource Management, Administration.
R477-15. Workplace Harassment Prevention[~~Policy and Procedure~~].
R477-15-1. [~~Purpose~~]Policy.

It is the State of Utah's policy to provide [~~all employees~~]a work[~~ing~~] environment [~~that is~~]free from discrimination and harassment based on race, religion, national origin, color, gender, age, disability, or protected activity or class under state and federal law.[

~~R477-15-2. Policy.~~]

(1) Workplace harassment includes the following subtypes:

(a) conduct in violation of Section R477-15-1 that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;

(b) conduct in violation of Section R477-15-1 that results in a tangible employment action against the harassed employee.

(2) An employee may be subject to discipline for workplace harassment, even if:

(a) the harassment is not sufficiently severe to warrant a finding of unlawful harassment, or

(b) the harassment occurs outside of scheduled work time or work location.

(3) Once a complaint has been filed, the accused may not communicate with the complainant regarding allegations of harassment.

R477-15-[~~3~~]2. Retaliation.

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing, or is otherwise engaged in protected activity.

R477-15-[~~4~~]3. Complaint Procedure.

Management shall permit individuals affected by workplace harassment, retaliation, or both to file complaints and engage in an administrative process free from bias, collusion, intimidation or retaliation. Complainants shall be provided a reasonable amount of work time to prepare for and participate in internal complaint processes.

(1) Individuals who feel they are being subjected to workplace harassment, retaliation, or both should do the following:

(a) document the occurrence;

(b) continue to report to work; and

(c) identify a witness, if applicable.

(2) An employee may file an oral or written complaint of workplace harassment, retaliation, or both with their immediate supervisor, any other supervisor within their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any individual, witness, volunteer or other employee.

(b) Complaints may be made through either oral or written notification and shall be handled in compliance with investigative procedures and records requirements in Sections R477-15-5 and R477-15-6.

(c) Any supervisor who has knowledge of workplace harassment, retaliation, or both shall take immediate, appropriate action in consultation with DHRM and document the action.

(3) All complaints of workplace harassment, retaliation, or both shall be acted upon following receipt of the complaint.

(4) If an immediate investigation by agency management is deemed unwarranted, the complainant shall be notified.

R477-15-[5]4. Investigative Procedure.

(1) Formal investigations shall be conducted by qualified individuals based on DHRM standards and business practices.

(2) Results of Investigation

(a) If the investigation finds the allegations to be sustained, agency management shall take appropriate action under Rule R477-11.

(b) If an investigation reveals evidence of criminal conduct in workplace harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the findings shall be documented and the appropriate parties notified.

R477-15-[6]5. Records.

(1) A separate confidential file of all workplace harassment and retaliation complaints shall be maintained and stored in the agency human resource field office, or in the possession of an authorized official.

(a) Removal or disposal of these files shall only be done with the approval of the agency head or Executive Director, DHRM.

(b) Files shall be retained in accordance with the retention schedule after the active case ends.

(c) All information contained in the complaint file shall be classified as protected under Section 63G-2-305.

(d) Information contained in the workplace harassment and retaliation file shall only be released by the agency head or Executive Director, DHRM, when required by law.

(2) Supervisors may not keep separate files related to complaints of workplace harassment or retaliation.

(3) Participants in any workplace harassment or retaliation proceeding shall treat all information pertaining to the case as confidential.

R477-15-[7]6. Training.

(1) Agencies shall ensure their employees receive training on the prevention of workplace harassment.

(a) The curriculum shall be approved by DHRM and the Division of Risk Management.

(b) After initial training all agencies shall ensure updated or refresher training is provided to employees every two years.

(c) Training shall be developed and provided by qualified individuals.

(d) Training records shall be maintained, including who provided the training, who attended the training and when they attended it.[~~Agencies shall comply with the Workplace Harassment Prevention Training Standards established by DHRM. As a minimum, these shall contain:~~

~~(a) course curriculum standards;~~

~~(b) training presentation requirements;~~

~~(c) trainer qualifications; and~~

~~(d) training records management criteria.~~]

KEY: administrative procedures, hostile work environment
Date of Enactment or Last Substantive Amendment: [~~August 9, 2010~~]2013
Notice of Continuation: February 3, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2[-3]; Governor's Executive Order on Prohibiting Unlawful Harassment, December 13, 2006, Number 2006/0012

Human Services, Child and Family Services
R512-52
Drug Testing Copayment for Parents of Children in Child and Family Services Custody

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 37527
FILED: 04/16/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of repealing this rule is to meet the requirements of S.B. 49 mandated by the Utah State Legislature (2013 General Session), which no longer allows Child and Family Services to collect some or all of the costs associated with drug testing from parents of children in state custody.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-109

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Child and Family Services estimates a yearly cost of $132,600 (based on estimated collection that would have occurred of 2,210 copay drug tests per month at $5 per test).

♦ LOCAL GOVERNMENTS: Child and Family Services determined that local governments are not affected by the rule and will have no fiscal impact because this rule only affects persons other than small business, business, or local government entities.
♦ SMALL BUSINESSES: Child and Family Services determined that small businesses are not affected by the rule and will have no fiscal impact because this rule only affects persons other than small business, business, or local government entities.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are $132,600 in cost savings cumulative (based on 2,210 copay drug tests per month that would have been paid by persons at $5 per test).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The copay for a drug test per month would have been paid by persons at $5 per test.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.
[~~R512-52. Drug Testing Copayment for Parents of Children in Child and Family Services Custody.~~
~~R512-52-1. Purpose.~~
~~(1) As intended by the Utah State Legislature during the 2012 Legislative Session, Child and Family Services is required to collect some or all of the costs associated with drug testing from parents of children in state custody.~~

~~R512-52-2. Authority.~~
~~(1) This rule is authorized by Sections 62A-4a-102 and 62A-4a-109.~~

~~R512-52-3. Applicability of Copayment.~~
~~(1) The copayment applies:~~
~~(a) If a parent has a child in Child and Family Services custody in out-of-home placement.~~
~~(b) When a parent's drug testing is completed by a Child and Family Services' contracted drug testing provider.~~
~~(2) The copayment does not apply:~~
~~(a) When the parent is testing through a non-Child and Family Services contracted drug testing provider.~~
~~(b) To a parent with a child in Child and Family Services custody on a trial home placement with that parent.~~
~~(c) To a parent who does not have children in Child and Family Services custody, including:~~
~~(i) Parents involved with Child Protective Services investigations.~~
~~(ii) Parents involved with In-Home Services who have custody of their children.~~
~~(iii) Parents involved with In-Home Services whose children are in the custody of kin or another caregiver.~~
~~(d) Youth clients.~~
~~(e) To a parent who has been ordered to pay the full cost of drug testing pursuant to Section 62A-4a-105(2)(b).~~

~~R512-52-4. Amount and Collection of Copayment.~~
~~(1) The amount of the copayment is determined by Child and Family Services.~~
~~(2) The collection of the copayment is performed by the Child and Family Services contracted drug testing provider at the time of specimen collection.~~
~~(3) The copayment must be collected before the drug test can be performed. Failure by the parent to provide the copayment will result in a missed drug test.~~

~~KEY: child welfare~~
~~Date of Enactment or Last Substantive Amendment: December 11, 2012~~
~~Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-109~~]

Natural Resources; Oil, Gas and Mining; Oil and Gas
R649-9
Waste Management and Disposal

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 37545
FILED: 04/25/2013

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish standards for the management and disposal of exploration and production wastes from the oil and gas industry. Due to extensive reorganization, the rule is being repealed and

reenacted for improved readability by permittees and Division staff. Enhanced rules in Colorado and New Mexico since Utah's prior 1998 amendment have resulted in produced water from out-of-state oil and gas wells being transported and disposed into disposal facilities within Utah. Fortunately, only 6% of the produced water within Utah is transferred to disposal facilities, since most produced water is injected, the preferred disposal alternative. Rules from nearby states have been reviewed and the reenacted Rule R649-9 rule has been reviewed through an informal rulemaking process.

SUMMARY OF THE RULE OR CHANGE: This rule establishes standards for the management and disposal of exploration and production wastes from the oil and gas industry. A substantive provision that is not included from the old rule is the elimination of the Subsection R649-9-3(3.4) requirements for unlined disposal pits, since unlined disposal pits are not adequate for environmental protection. Substantive provisions that are being added to the new rule include more specificity to geologic and hydrological requirements, more specificity to diagrams required for pond construction and leak detection systems, secondary containment to capture a potential release, limitation on the size of pond to encourage evaporation rather than storage and limit potential release size, a new section on landfarms rather than included in other facilities, and reclamation bonds with third party cost determination.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 40-6-5(3)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Oil and Gas Program of the Division will implement the reenacted Rule R649-9 for oil and gas waste management facilities within Utah, but no direct costs or savings to the Division are anticipated from this change.
♦ LOCAL GOVERNMENTS: Local governments do not operate oil and gas waste management facilities in Utah, therefore there is no cost or savings to local government.
♦ SMALL BUSINESSES: The companies who operate oil and gas waste management facilities in Utah are affected by this rule. The Division has determined Rule R649-9 applies to 22 commercial disposal facilities and 19 non-commercial facilities within Utah, all accepting waste streams from oil and gas wells and well sites. Small businesses represent 39% of the number of such facilities in Utah, but a much lower percentage of the total volume of exploration and production waste handled. In another way, the larger businesses normally operate a facility that is much larger in scale and volume. Design and construction requirements for disposal facilities approved prior to 07/01/2013 remain as previously permitted. The requirement for reclamation bonds utilizing third party cost estimates is delayed for current facilities until five years after 07/01/2013, and the Division is not able to calculate the total costs without the third party figures. Some disposal facilities in Utah are not expected to see increased bond costs.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities are not impacted by this rule, since the rule impacts companies who operate oil and gas waste management facilities within Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The companies who operate oil and gas waste management facilities in Utah are affected by this rule. Since the existing rule was written in a more general manner, many of the permitting standards in the reenacted rule were already implemented in past practice with permittees. The Division has determined Rule R649-9 applies to 22 commercial disposal facilities and 19 non-commercial facilities within Utah, all accepting waste streams from oil and gas wells and well sites. Significant current capacity and newer technology being implemented to reduce the volume of produced water to be transported to evaporation facilities indicates there would be limited growth of new evaporation ponds in the near future. Design and construction requirements for disposal facilities approved prior to 07/01/2013 remain as previously permitted. The requirement for reclamation bonds utilizing third party cost estimates is delayed for current facilities until five years after 07/01/2013, and the Division is not able to calculate the total costs without the third party figures, although some facilities are expected to see no bond increase.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Division has carefully considered this reenacted rule for existing facilities to provide for a five-year delay in new bond costs. In addition, the design and construction requirements remain as previously permitted, as shown in Subsection R649-1-1(1.3), for facilities approved prior to 07/01/2013. The Division has undertaken an extensive informal rulemaking which included opportunities for input from stakeholders prior to the Board of Oil, Gas and Mining allowing this rulemaking to proceed to the formal process in the State Bulletin.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING;
OIL AND GAS
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2013

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 05/30/2013 09:00 AM, Uintah Basin ATC, 1100 E Lagoon St., Roosevelt, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2013

AUTHORIZED BY: John Baza, Director

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-9. Waste Management and Disposal.
[~~R649-9-1. Introduction.~~

~~1. Section 40-6-5 UCA authorizes the board to regulate the disposal of salt water and oil-field wastes. It is the intent of the Board and Division to regulate E and P wastes and facilities for the disposal of these wastes in a manner that protects the environment, limits liability to producers, and minimizes the volume of waste.~~

~~2. These rules specify the informational and procedural requirements for waste management and disposal, the permitting of disposal facilities and the cleanup requirements for E and P waste related sites.~~

~~R649-9-2. General Waste Management.~~

~~1. Wastes addressed by these rules are E and P Wastes that are exempt from the RCRA hazardous waste management requirements.~~

~~1.1. Before using a commercial disposal facility the operator may contact the Division to verify the status of the facility. The Division regularly updates this information on the Division of Oil, Gas and Mining web site.~~

~~1.2. Each site and/or facility used for disposal must be permitted and in good standing with the division.~~

~~2. Reduction of the amount of material generated that must be disposed of is the preferred practice.~~

~~2.1. Recycling should be used whenever possible and practical.~~

~~2.2. In general, good housekeeping practices shall be used.~~

~~2.3. Operators shall catch leaks, drips, contain spills, and cleanup promptly.~~

~~3. The method of disposal used shall be compatible with the waste that is the subject of disposal.~~

~~3.1. RCRA exempt waste shall not be mixed with nonexempt waste.~~

~~4. Every operator shall file an Annual Waste Management Plan by January 15 of each year to account for the proper disposition of produced water and other E and P Wastes.~~

~~4.1. If changes are made to the plan during the year, then the operator shall notify the division in writing of this change.~~

~~4.2. This plan will include the type and estimated annual volume of wastes that will be or have been generated.~~

~~4.3. The disposal facilities private or to be used for disposal,~~

~~4.4. The description of any waste reduction or minimization procedures.~~

~~4.5. Any onsite disposal/treatment methods or programs to be implemented by the operator.~~

~~R649-9-3. Permitting of Disposal Pits.~~

~~1. All commercial disposal pits and disposal pits located off of an existing mineral lease shall be bonded in accordance with R649-9-9, Bonding of Disposal Facilities to assure proper operation, maintenance, and closure of the pits.~~

~~2. Application shall be made to the Division for approval of any disposal pit.~~

~~2.1. The pit shall be designed appropriately for the intended purpose.~~

~~2.2. Commercial disposal pits shall be designed and constructed under the supervision of a registered professional engineer.~~

~~2.3. The application and site shall meet the following requirements:~~

~~2.3.1 The pit shall be located on level, stable ground, and an acceptable distance away from any established or intermittent drainage.~~

~~2.3.2. The pit shall not be located in a geologically and hydrologically unsuitable area, such as aquifer recharge areas, flood plains, drainage bottoms, and areas near faults.~~

~~2.3.3. The pit shall have adequate storage capacity to safely contain all produced water even during those periods when evaporation rates are at a minimum.~~

~~2.3.4. The pit shall be designed and constructed so as to prevent the entrance of surface water.~~

~~2.3.5. The pit shall be designed, maintained and operated to prevent unauthorized surface or subsurface discharge of water.~~

~~2.3.6. The pit shall be fenced and maintained to prevent access by livestock, wildlife and unauthorized personnel and if required, equipped with flagging or netting to deter entry by birds and waterfowl.~~

~~2.3.7. The pit levees for produced water pits receiving volumes in excess of five barrels per day, shall be constructed so that the inside grade of the levee is no steeper than 3:1 and the outside grade no steeper than 2:1. The top of the levee shall be level and of sufficient width to allow for adequate compaction.~~

~~2.3.8 All approved produced water pits not located at a well site shall be identified with a suitable sign.~~

~~2.3.9. The artificial materials used in lining pits shall be impervious and resistant to weather, sunlight, hydrocarbons, aqueous acids, alkalies, salt, fungi, or other substances that might be contained in the produced water.~~

~~3. If rigid materials are used, leak proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand, expansion, contraction and settling movements in the underlying earth, without cracking.~~

~~3.1. If flexible materials are used, they shall be of sufficient thickness and strength to be resistant to tears and punctures.~~

~~3.2. Commercial disposal pits shall be lined with a minimum liner thickness of 40 mils or as approved by the Division.~~

~~3.3. Lined pits constructed in relatively impermeable soils shall have an underlaying gravel filled sump and lateral system or suitable leak detection system.~~

~~3.4. Lined pits constructed in relatively permeable soils shall have a secondary liner underlaying the leak detection system, that is graded so as to direct leaks to the observation sump.~~

~~3.5. Test borings shall be taken in sufficient quantity and to an adequate depth to satisfactorily define subsurface conditions and assure that the liner will be placed on a firm stable base and to determine the appropriate leak detection system.~~

~~4. Requirements for Unlined Disposal Pits.~~

~~4.1 An application for disposal of produced water into an unlined pit will be considered if such disposal does not demonstrate significant pollution potential to surface or ground water and meets at least one of the following criteria:~~

~~4.2. The water to be disposed of does not have a higher total dissolved solids "TDS" content than ground water that could be affected and provided that the water does not contain objectionable levels of constituents and characteristics including chlorides, sulfates, pH, oil, grease, heavy metals and aromatic hydrocarbons.~~

~~4.3. That all, or a substantial part of the produced water is being used for beneficial purposes such as irrigation and livestock or wildlife watering and a water analysis indicates that the water is acceptable for the intended use.~~

~~4.4. The volume of water to be disposed of does not exceed five barrels per day on a monthly basis.~~

~~5. Application Requirements for Produced Water Pits.~~

~~5.1. Applications for disposal of produced water into lined pits shall include the following information:~~

~~5.2. A topographic map and drawing of the site, on a suitable scale, that indicate the pit dimensions, cross section, side slopes, leak detection system and location relative to other site facilities. The drawings shall be of professional quality.~~

~~5.3. The maximum daily quantity of water to be disposed of and a representative water analysis of such water that includes the concentrations of chlorides and sulfates, pH, total dissolved solids "TDS", and information regarding any other significant constituents if requested.~~

~~5.4. Climatological data indicating the average annual evaporation and precipitation for the area.~~

~~5.5. The method and schedule for disposal of precipitated solids.~~

~~5.6. Drawings of unloading facilities and explanation of the method for controlling and disposing of any liquid hydrocarbon accumulation so that the evaporation process is not hampered.~~

~~5.7. The engineering data and design criteria used to determine the pit size that includes a 2-foot free-board.~~

~~5.8. The type, thickness, strength, and life span of material to be used for lining the pit and the method of installation.~~

~~5.9. A description of the leak detection method to be utilized,~~

~~5.9.1. The proposed inspection frequency of the detection system.~~

~~5.9.2. The proposed procedures for repair of the liner should leakage occur.~~

~~6. Applications for disposal of produced water into unlined pits shall include the following information:~~

~~6.1. A topographic map and drawing of the site on a suitable scale that indicate the pit dimensions, cross section, side slopes, size and location relative to other site facilities.~~

~~6.2. The daily quantity of water to be disposed of and a representative water analysis of such water that includes the total dissolved solids "TDS", pH, oil and grease content, the concentrations of chlorides and sulfates, and information regarding any other significant constituents if required.~~

~~6.3. Climatological data indicating the average annual evaporation and precipitation for the area.~~

~~6.4. The estimated percolation rate based on soil characteristics under and adjacent to the pit.~~

~~6.5. Estimated depth and areal extent of any USDW in the area and an indication of any effect or interaction of the produced water with any such water resources present at or near the surface.~~

~~6.6. If beneficial use is the basis for the application, written confirmation from the user should be submitted.~~

~~6.7. If the application is made on the basis that surface and subsurface waters will not be adversely affected by disposal in an unlined pit, the following additional information is required:~~

~~6.7.1. A map showing the location of surface waters, water wells, and existing water disposal facilities within a one mile radius of the proposed disposal facility.~~

~~6.7.2. The weighted average concentration of total dissolved solids "TDS" of all surface and subsurface waters within a one mile radius that might be affected by the proposed disposal.~~

~~6.7.3. Any reasonable geological and hydrological evidence showing that the proposed disposal method will not adversely affect existing water quality or major uses of such waters.~~

~~7. Within 30 days of the submission of an application for disposal of produced water into a commercial disposal pit, the division shall review the application as to its completeness and adequacy for the intended purpose and shall require such changes that are found necessary to assure compliance with the applicable rules. If the application is in order, the Division shall provide for a public notice to be published in a newspaper of general circulation in the county where the pit is to be located.~~

R649-9-4. Permitting of Other Disposal Facilities.

~~1. Facilities used for the treatment and disposal of E and P wastes other than evaporation pits shall be permitted by the Division. This would include such activities as landfarming, composting, solidifying, bioremediation, and others.~~

~~2. All commercial treatment and disposal facilities must be bonded in accordance with R649-9-9, Bonding of Disposal Facilities, to assure proper operation, maintenance, and closure of the facility.~~

~~3. Application Requirements for Treatment and Disposal Facilities. The application shall contain the following:~~

~~3.1. A complete description of the proposed facility,~~

~~3.2. Processes involved including a complete list of all wastes to be accepted at the facility and products generated.~~

~~3.3. Maps and drawings of suitable scale showing all facilities and equipment.~~

~~3.4. Materials or products to be applied to the land surface or subsurface shall meet the Division's cleanup levels for contaminated soil and other wastes.~~

~~3.5. If leachability and/or toxicity is of concern due to the type or source(s) of wastes, tests will be required and may utilize the Toxicity Characteristic Leaching Procedure (TCLP).~~

~~3.6. The submission of an application to the Division of Water Quality, Department of Environmental Quality, for a discharge permit may be required if it is determined that the facility and associated activity will not have a de minimus actual or potential effect on ground water quality.~~

~~3.7. If the Division determines there is potential for discharge, or if the proposal involves a commercial disposal operation it will be forwarded to the Division of Water Quality for their review.~~

R649-9-5. Construction and Inspection Requirements for Disposal Facilities.

1. Division personnel shall be afforded a reasonable opportunity for inspection of any proposed disposal facility during the construction and operation of the facility.

2. The division shall be notified at least two working days prior to the installation of a pit liner so that an inspection of the leak detection system can be conducted.

3. In any case, the division shall be notified after completion of facility construction, at least two working days prior to its use, so that an inspection can be conducted to verify that the facility has been constructed in accordance with the approved application.

4. Disposal facilities shall be operated in accordance with an approved application and in a manner that does not cause pollution or safety and health hazards.

5. Failure to meet the requirements and standards for construction and operation of a disposal facility shall be considered as noncompliance and will result in the imposition of corrective actions and compliance schedules or a cessation of operations order.

R649-9-6. Reporting and Recordkeeping Requirements for Disposal Facilities.

1. All unauthorized discharges or spills from disposal facilities including water observed in a leak detection system shall be promptly reported to the division.

2. Each producer who utilizes any approved produced water disposal facility shall comply with the reporting requirements of R649-8-10.

3. Each operator of a disposal facility, excluding disposal wells, shall report to the Division on a quarterly basis. This report shall include the volume and type of wastes received at the facility during the quarter and results of the leak detection system inspections.

4. The occurrence of water in a leak detection system during operation of a pit constitutes liner failure and requires immediate action.

4.1. The Division has the option of allowing the operator a short period of time to take corrective action.

4.2. Further utilization of the pit will be allowed only after liner repairs and an inspection by the Division.

5. Each owner/operator of a commercial disposal facility shall keep records showing at a minimum the following: date and time waste was received, origin, volume, type, transporter, and generator of the waste. These records shall be available for inspection by the Division for at least six years.

R649-9-7. Final Closure and Cleanup of Disposal Facilities.

1. A plan for final closure of a disposal facility shall be submitted to the Division for approval. The closure plan shall include the following:

1.1. Provisions for removal of all equipment at the site.

1.2. Proposed plans and procedures for sampling and testing soils and ground water at the site.

1.3. Soils will need to meet the Division's Cleanup Levels for Contaminated Soils or background levels whichever is less stringent.

1.4. Provisions for a monitoring plan if required by the Division, and

1.5. A consideration of post disposal land use and landowner requests when the closure plan is developed.

2. A bond for a disposal facility will be released when the requirements of a closure plan approved by the Division has been met as determined by the Division.

R649-9-8. Variances from Requirements and Standards.

Requests for approval of a variance from any of the requirements or standards of these rules shall be submitted to the director in writing and provide information as to the circumstances that warrant approval of the requested variance and the proposed alternative means by which the requirements or standards will be satisfied. Variances may be approved only after proper notice and public hearing before the board.

R649-9-9. Bonding of Disposal Facilities.

1. Disposal facilities, other than injection wells, shall be bonded according to this rule in order to protect the State and oil and gas producers from unnecessary liabilities and cleanup costs in the future. The objectives are to provide the State with adequate security to allow rehabilitation of a site to the point of preventing further or future pollution, and health and safety hazards should a facility owner default.

1.1. The parameters used to calculate the proper bond amount are: pit area, storage capacity, and volume of waste stored.

1.2. Bonds accepted shall be of the same type as those accepted for wells i.e. surety, collateral, or a combination of the two as described in the R649-3-1.

1.2.1. In order to assist owners of facilities operating prior to 1997 to establish bonding, the total bond amount provided may consist of an initial amount as determined by the division and an additional amount collected at a price per barrel and/or price per cubic yard of waste collected until the total bond amount is reached.

1.2.2. The total bond will be held by the division or financial institution until the facility has been closed and inspected by the division in accordance with a division approved closure plan.

1.3. Total bond amount is calculated using values for pit area, pit storage capacity, and volume of stock piled waste material.

1.3.1. No salvage value of equipment or removal cost is used.

1.3.2. This bond will only be used by the State to treat or remove waste from the site and secure the facility to prevent any future contamination should the facility owner default on cleanup responsibilities.

1.3.3. Bond amounts will be calculated as follows, and the per volume or per acre figures may be adjusted periodically to compensate for change in cost to perform the necessary cleanup work:

$14,000 per acre of pit, partial acres will be calculated at the rate of $14,000 per acre; plus

$1.00 per barrel of produced water for one-quarter of the total storage capacity of the facility; plus

$30 per cubic yard of solid or semi-solid waste material stockpiled at the facility.

$10,000 Minimum bond amount.

1.4. All commercial disposal facilities (except injection wells covered by R649-3-1) will be covered by an adequate and acceptable bond before being permitted to accept any exploration and production waste. The initial and minimum bond payment will be at least $10,000. The total bond amount will be calculated as described in Subsection R649-9-9(1.3). If requested by the disposal facility owner, the bond beyond the initial amount may be posted at a rate of two cents

~~per barrel of liquid or sixty cents per cubic yard of solid/semi-solid waste material accepted for disposal at the facility.~~]

R649-9-1. Introduction.

1. Section 40-6-5 UCA authorizes the board to regulate the disposal of produced water and oil-field wastes. It is the intent of the board and division to regulate E and P wastes and facilities for the disposal of these wastes in a manner that protects the environment, limits liability to producers, and minimizes the volume of waste.

2. These rules specify the informational and procedural requirements for waste management and disposal, the permitting of disposal facilities and the cleanup requirements for E and P waste related sites.

3. Design and construction requirements for disposal facilities approved prior to July 1, 2013 shall remain as previously permitted. Design and construction changes to these facilities after July 1, 2013 shall meet the following requirements as determined by the division.

4. These rules are intended for E and P waste disposal facilities excluding Class II injection wells and pits associated with wells.

R649-9-2. General Waste Management.

1. Wastes addressed by these rules are E and P Wastes that are exempt from the RCRA hazardous waste management requirements.

1.1. Before using a commercial disposal facility the operator may contact the division to verify the status of the facility. The division regularly updates this information on the Division of Oil, Gas and Mining web site.

1.2. Each site and/or facility used for disposal must be permitted and in good standing with the division.

1.3. All approved disposal facilities not located at a well site shall be identified with a suitable sign showing facility name, operator, location and emergency number.

1.4. The disposal facility shall be fenced and maintained to deter access by livestock and wildlife and, if determined necessary by the division, equipped with flagging or netting to deter entry by birds and waterfowl.

2. Reduction of the amount of material generated that must be disposed of is the preferred practice.

2.1. Recycling should be used whenever possible and practical.

2.2. In general, good housekeeping practices shall be used.

2.3. Operators shall catch leaks, drips, contain spills, and cleanup promptly.

2.4. Disposal facilities shall be operated in accordance with an approved application and in a manner that does not cause safety or health hazards.

3. The method of disposal used shall be compatible with the waste that is the subject of disposal.

3.1. Whenever possible, injection of E and P waste into approved Class II wells is the division's preference.

3.2. RCRA exempt waste shall not be mixed with nonexempt waste.

4. Every operator shall submit, to the division, an Annual Waste Management Plan by January 15 of each year to account for the proper disposition of produced water and other E and P Wastes. This plan will include:

4.1. The type and estimated annual volume of wastes that will be or have been generated.

4.2. The facilities to be used for disposal.

4.3. The description of any waste reduction or minimization procedures.

4.4. Any onsite disposal/treatment methods or programs to be implemented by the operator.

4.5. If changes are made to the plan during the year, then the operator shall notify the division in writing, within 30 days, of this change.

R649-9-3. Permit and Application Requirements for Disposal Facilities.

1. No waste disposal facility shall operate without a division-issued permit.

2. Applications for new disposal facilities or modifications shall be submitted to the division and shall include the following:

2.1. Previously submitted material may be included by reference provided they are current and readily available to the division.

2.2. Evidence justifying the need for the proposed facility or expansion of an existing facility.

2.3. Names and addresses of all applicants, principal officers and owners with 25 percent or more interest in the facility.

2.4. Materials or products to be applied to the land surface or subsurface shall meet the division's current cleanup levels for contaminated soil and other wastes.

2.5. If leachability and/or toxicity are of concern due to the type or source(s) of wastes, tests will be required and may utilize the Toxicity Characteristic Leaching Procedure (TCLP), Synthetic Precipitation Leaching Procedure (SPLP) or any other test approved by the division.

2.6. A contingency plan designed to minimize any hazards to fresh water, public health and safety, or the environment in the event of an unplanned fire, explosion, or a release of contaminants or oil field waste to the air, soil, surface water or ground water.

2.7. A solid waste stream management plan describing all chemical processes, estimated volumes and chemical profiles used in the treatment of waste and odor, any products generated by these processes, method and schedule for disposal of precipitated solids and complete list of all wastes to be accepted at the facility.

2.8. A topographic map and drawing of the site, on a suitable scale, that identifies all geologic cross sections, side slopes, equipment, secondary containment, test borings, roads, fences, gates, wells and springs, drainage patterns, pipelines, surface area to be disturbed, buildings and chemical storage areas within one mile of the site perimeter and location relative to other site facilities. The drawings shall be of professional quality.

3. Siting requirements for new disposal facilities and modifications.

3.1. The disposal facility shall be located on level, stable ground, and an acceptable distance away from any established or intermittent drainage.

3.2. The disposal facility shall be located a minimum of one mile from residences or occupied buildings not associated with the facility unless a wavier has been signed by the owners of the residences and buildings within one mile.

4. Geologic and hydrological requirements for new disposal facilities or modifications.

4.1. The disposal facility shall not be located in a geologically or hydrologically unsuitable area, such as aquifer recharge areas, protection zones for public drinking water sources, flood plains, drainage bottoms, and areas on or near faults, within 500 feet of a wetland, water-course or lakebed, permeable soil where ground water is less than 50 feet below the lowest elevation at which the operator will place oilfield waste, or within the area overlying a subsurface mine.

4.2. Regional and local geologic information shall include bedrock strike and dip, fracture patterns, slope stability, faulting, folding, rockfall, landslides, subsidence or erosion potential, and surface water features that may affect the design and operation of the facility.

4.3. Geological and hydrological evidence showing that the proposed disposal method will not adversely affect existing water quality or major uses of such waters.

4.3.1. Any intentional discharge of water will require an additional permit from the Division of Water Quality.

4.4. Test borings shall be taken in sufficient quantity and to an adequate depth, not to exceed 50 feet, to define subsurface conditions to assure that the facility will be constructed on a firm stable base.

4.5. Representative analysis of facility surface and subsurface soils submitted to the division shall include TDS, major cations and anions or other analysis determined necessary by the division for establishing background soil concentrations.

4.6. Geologic cross-sections submitted to the division shall include depth to shallow ground water, formation names, and type and name of the shallowest fresh water aquifer beneath the proposed site.

4.7. If determined necessary by the division, applicant shall submit ground water analysis of the aquifer(s) beneath the proposed site.

4.8. If determined necessary by the division, applicant shall submit potentiometric maps of the shallowest aquifer(s).

5. Engineering and design requirements for new disposal facilities and modifications.

5.1. Disposal facilities shall be designed and sealed by a registered engineer and inspected by a registered engineer during construction.

5.1.1. A construction certification shall be submitted, by the engineer, prior to the Division issuing an operation permit for the facility.

5.2. The disposal facility shall be designed appropriately for the intended purpose.

5.3. Facilities shall be designed, constructed and operated so as to contain liquids and solids in a manner that will protect fresh water, public health and safety, and the environment for the life of the operation.

5.3.1. The disposal facility shall be designed with secondary containment to capture the largest potential release in the event of a catastrophic failure.

5.4. Facilities shall be designed and constructed so as to prevent run-on and run-off of surface water, up to peak discharge from a 25 year, 24 hour storm.

5.5. The facility shall be designed such that disposal can only occur when an attendant is on duty, unless loads can be monitored or otherwise isolated for inspection before disposal or other security measures approved by the division.

R649-9-4. Specific Requirements Applicable to Evaporation Facilities.

1. Evaporation facilities shall be designed, constructed and operated to meet the following specific requirements in addition to R649-9-3, Permit and Application Requirements for Disposal Facilities.

2. Applicant shall submit detailed construction/installation diagrams of ponds, side slopes, liners, pond storage capacity, leak detection systems, dikes or levees, wind fences, piping, enhanced evaporation systems with justification, water treatment systems and tanks.

2.1. Detailed information shall be submitted for all enhanced evaporation systems which demonstrates that unlawful discharge will not occur.

2.2. The facility shall be designed, maintained and operated to separate oil from produced water prior to discharge into a pond.

3. Applicant shall submit detailed construction/ installation diagrams of unloading facilities and an explanation of the method for controlling and disposing of any liquid hydrocarbon accumulation on the ponds.

3.1. The unloading facility shall be designed, maintained and operated to adequately process the anticipated maximum daily quantity of produced water.

3.2. The unloading facility shall be designed with a leak detection system if determined necessary by the division.

3.2.1. Applicant shall submit procedures for repair should leakage occur.

4. Applicant shall submit the maximum daily quantity of water to be disposed of and a representative water analysis of such water that includes the concentrations of chlorides and sulfates, pH, total dissolved solids "TDS", and information regarding any other significant constituents if requested by the division.

5. Applicant shall submit climatological data describing the average annual evaporation and precipitation.

6. Ponds shall be designed, maintained and operated to meet the following requirements.

6.1. Ponds shall be designed for 10 acre-feet of water or less, unless otherwise approved by the division.

6.2. Ponds shall have adequate storage capacity to safely contain all produced water even during those periods when evaporation rates are at a minimum.

6.3. Ponds shall be designed to prevent unauthorized surface or subsurface discharge of water.

6.4. Ponds shall be designed to include a 2-foot free-board at all times.

6.5. Pond levees shall be constructed so that the inside grade of the levee is no steeper than 3:1 and the outside grade no steeper than 2:1.

6.5.1. The top of the levee shall be level and of sufficient width to allow for adequate compaction.

6.5.2. Vertical height of the levees shall not exceed 25 percent of the total vertical depth of the pond.

7. Ponds shall be designed with two synthetic liners, an upper primary and lower secondary liner, with a leak detection system between them. Synthetic liners shall be installed according to the manufacturer's instructions.

7.1. The primary liner shall be impervious (a hydraulic conductivity no greater than 1 x 10-9 cm/sec) and constructed with a minimum 60-mil HDPE or equivalent liner approved by the division.

7.2. The secondary liner shall be impervious and constructed with a minimum 40-mil HDPE or equivalent liner approved by the division.

7.3. If rigid materials are used, leak proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand expansion, contraction and settling movements in the underlying earth, without cracking.

7.4. Materials used in lining ponds shall be impervious and resistant to weather, tears and punctures, sunlight, hydrocarbons, aqueous acids, alkalies, salt, fungi, or other substances that might be contained in the produced water.

7.5. Applicant shall submit the type, thickness, strength, and life span of material(s) to be used for lining the pond and the method of installation.

7.6. Applicant shall submit procedures for repair of the liner, should leakage occur.

8. Applicant shall submit detailed construction/installation diagram for the leak detection system.

8.1. The leak detection design shall include, a drainage and collection system placed between the upper and lower liners and sloped so as to facilitate the earliest possible detection of a leak.

8.2. The leak detection design shall include a vertical riser outside the dike allowing direct visual inspection of the sump from the surface.

8.2.1. The sump shall be designed to extend a minimum of two feet below the inlet line from the pond, allowing visual detection of any fluid and sampling of fluid.

8.2.2. Designed with a removable top for the sump riser that will prevent entry of fluids.

8.3. Designed with leak detection piping capable of withstanding chemical attack from oil field waste, structural loading from stresses and disturbances from overlying oil field waste and cover materials, equipment operation, expansion and/or contraction, and facilitate clean-out maintenance.

9. Evaporation facilities shall be operated to separate oil from produced water prior to discharge into a pond and prevent unauthorized surface discharge of water.

9.1. Hydrocarbon accumulation, other than de minimis quantities, on an evaporation pond is considered a violation and shall be removed within 24 hours.

9.2. Overspray from sprinklers and/or overspray caused by wind, including foam, outside lined areas are considered a violation and shall be corrected immediately.

9.3. Sampling and testing of soils suspected to be contaminated from overspray may be required by the division.

R649-9-5. Specific Requirements Applicable to Landfarms.

1. Landfarms for the bioremediation of oil contaminated soils and materials shall be designed and constructed to meet the following specific requirements in addition to R649-9-3, Permit and Application Requirements for Disposal Facilities.

1.1. Landfarms shall be constructed on native soil with a hydraulic conductivity of no greater than 1 x 10-6 cm/sec.

1.2. With division approval, fresh water may be added as necessary to enhance bioremediation and control dust.

1.3. Application of microbes and nutrients for enhancing bioremediation requires prior division approval.

2. Landfarms shall be operated to meet the following requirements:

2.1. E and P waste accepted by the landfarm shall be sufficiently free of liquid content to pass a 60-mesh liquid paint filter test.

2.2. Pooling of liquids in the landfarm is prohibited. The operator shall remove freestanding liquid within 24 hours.

2.3. Within 72 hours after receipt of E & P waste the operator shall spread and disk the waste in twelve-inch or less lifts.

2.4. Soils shall be disked and turned regularly, a minimum of once a month.

2.5. Conduct treatment and soil monitoring to ensure that prior to adding an additional lift the soil concentrations do not exceed the division's current salinity and hydrocarbon cleanup standards.

2.6. Maintain records of the landfarm remediation activity. The records shall be readily accessible for division review.

R649-9-6. Other Disposal Facility Requirements.

1. Facilities used for the treatment and disposal of E and P wastes other than evaporation ponds and landfarms shall be permitted by the division. This may include activities such as composting, solidifying, other bioremediation, water treatment, and others.

2. Application Requirements for Other Disposal Facilities require the following in addition to R 649-9-3, Permit and Application Requirements for Disposal Facilities:

2.1. A complete description of the proposed facility.

2.2. Processes involved including a complete list of all wastes to be accepted at the facility and products generated.

2.3. Maps and drawings of suitable scale showing all facilities and equipment.

R649-9-7. Noticing of Disposal Facilities.

1. The applicant for a new facility or major modification shall give written notice of the application, by certified mail, return receipt requested, to surface and mineral owners of record within one-half mile of the facility, the county commission of the county where the facility is located, and affected tribal and government agencies.

1.1. The notice shall include information describing the facility's location, basic plan of operations, and the applicant's name and address.

1.2. The applicant shall furnish the division proof of required notices.

1.3. The division may extend the distance requirements for notice if the division determines that the proposed disposal facility has the potential to adversely impact fresh water, public health, safety or the environment at a distance greater than one-half mile.

2. Within 30 days of the submission of an application for a disposal facility, the division shall review the application as to its completeness and adequacy for the intended purpose and shall require such changes that are found necessary to assure compliance with the applicable rules. If the application is in order, the division shall provide for a public notice to be published in a newspaper of general circulation in the county where the facility is to be located.

R649-9-8. Bonding of Disposal Facilities.

1. Disposal facilities, other than injection wells and their associated facilities, shall be bonded according to this rule in order to protect the State and oil and gas producers from unnecessary liabilities and cleanup costs in the future. The objectives are to provide the State with adequate security for site reclamation and post closure cost should a facility owner default.

2. Permits issued after July 1, 2013 for new disposal facilities or modifications and facilities being reviewed for 5-year permit renewals, shall submit site reclamation and post closure cost estimates from a responsible third party contractor for division approval.

2.1. The applicant shall bond in the amount of the approved estimated site reclamation and post closure costs, or $25,000, whichever is greatest.

3. Bonds accepted shall be of the same type as those accepted for wells i.e. surety, collateral, or a combination of the two as described in the R649-3-1.

4. The total bond will be held by the division or financial institution until the facility has been closed and inspected by the division in accordance with a division approved closure plan.

5. Bond amounts, for permits approved prior to July 1, 2013 will be calculated as follows, and the per volume or per acre figures may be adjusted periodically to compensate for change in cost to perform the necessary cleanup work:

$14,000 per acre of pit, partial acres will be calculated at the rate of $14,000 per acre; plus

$1.00 per barrel of produced water for one-quarter of the total storage capacity of the facility; plus

$30 per cubic yard of solid or semi-solid waste material stockpiled at the facility.

$10,000 Minimum bond amount.

5.1. Operators of disposal facilities permitted prior to July 1, 2013 shall have until July 1, 2018 (five years) to submit, to the division, a disposal facility site reclamation and post closure bond as required above in R649-9-8.2.

6. All disposal facilities, except injection wells covered by R649-3-1, will be covered by an adequate and acceptable bond before being permitted to accept any E and P waste.

7. Forfeiture of the bond shall be the same as those for wells as described in the R649-3-1.16.

R649-9-9. Permit and Renewal Approval, Denial, Revocation, Suspension, Modification or Transfer.

1. Permit and renewal approval.

1.1. Construction approvals issued by the division are valid for one year from approval date. An extension may be granted by the division.

1.2. Operating approvals issued by the division for waste management facilities shall remain in effect for five years from the approval date.

1.3. After division review, permits may be renewed for successive 5-year terms.

1.3.1. Prior to renewal approval, the division shall review the operation, compliance history, bonding and technical requirements for the disposal facility.

1.3.2. The division, after notice to the operator, may require modifications of the disposal facility permit, including modifications necessary to the facility permit terms and conditions consistent with statutes, rules or judicial decisions.

2. An application may be denied if:

2.1. A complete application is not submitted.

2.2. The application does not meet R649-9-3.3 on siting and/or R649-9-3.4 on geologic and hydrologic requirements.

2.3. The proposed disposal facility or modification may be detrimental to fresh water, public health, safety or the environment.

2.4. The applicant is unable to justify good cause for the proposed facility.

2.5. An applicant or owner in the facility has a history of failure to comply with division rules and orders, state or federal environmental laws, or is in current violation of a division or board order requiring corrective action.

3. Revocation, suspension, or modification of a permit.

3.1. The division may revoke, suspend, or impose additional operating conditions or limitations on a disposal facility permit at any time, for good cause, after notice to the operator.

3.2. The division may suspend a waste disposal permit or impose additional conditions or limitations in an emergency to forestall an imminent threat to fresh water, public health, safety or the environment.

3.3. Suspension of a disposal facility permit may be for a fixed period of time or until the operator remedies the violation or potential violation.

3.4. If the division suspends a disposal facility permit, the disposal facility shall not accept oil field waste during the suspension period.

4. Transfer of a permit.

4.1. The operator shall not transfer a permit without the division's prior written approval.

4.2. A request for transfer of a permit shall identify officers, directors and owners of 25 percent or greater in the transferee.

4.3. Unless the director otherwise orders, public notice or hearing are not required for the transfer request's approval.

4.4. If the division denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the transferee may request, within 10 days of receipt of the notice, a public hearing before the board.

4.5. Until the division approves the transfer and the required assurance is in place, the division shall not release the transferor's financial assurance.

R649-9-10. Construction and Inspection Requirements for Disposal Facilities.

1. Division personnel shall be afforded a reasonable opportunity for inspection of any proposed disposal facility during the construct8ion and operation of the facility.

2. The division shall be notified at least 72 hours prior to the installation of leak detection systems or liners.

3. The division shall be notified after completion of facility construction so that a final inspection can be conducted to verify that the facility has been constructed in accordance with the approved application.

4. Failure to meet the requirements and standards for construction and operation of a disposal facility shall be considered as noncompliance and will result in the imposition of corrective actions and compliance schedules or a cessation of operations order.

R649-9-11. Reporting and Recordkeeping for Disposal Facilities.

1. All unauthorized discharges or spills from disposal facilities including water observed in a leak detection system shall be reported, within 24 hours, to the division.

2. Each producer who utilizes any approved produced water disposal facility shall comply with the reporting requirements of R649-8-11.

3. Each operator of a disposal facility, excluding disposal wells, shall report to the division on a quarterly basis.

3.1. This report shall include the volume and type of wastes received at the facility during the quarter and results of the weekly leak detection system inspections.

3.2. Berms and outside walls shall be inspected quarterly and after a major rainfall or windstorm. Berm erosion or loss of integrity shall be reported to the division and may require immediate action.

4. The occurrence of water in a leak detection system during operation constitutes liner failure and requires immediate action.

4.1. The division has the option of allowing the operator a short period of time to take corrective action.

4.2. Further utilization will be allowed only after liner repairs and an inspection by the division.

5. Each owner/operator of a disposal facility shall keep records showing at a minimum the following: date and time waste was received, origin, volume, type, transporter, and generator of the waste. These records shall be available for inspection by the division for at least six years.

R649-9-12. Closure and Post Closure of Disposal Facilities.

1. A plan for final closure of a disposal facility shall be submitted to the division, for approval, at least 60 days prior to cessation of operations. The closure plan shall include the following:

1.1. Provisions for removal of all equipment, buildings, fences and roads at the site.

1.2. Removal of berms.

1.3. Removal of liquids and solid waste to a division approved facility.

1.4. Disposal method for liners.

1.5. Plans and procedures for sampling and testing soils and ground water at the site.

1.5.1. Soils shall meet division cleanup standards or background levels whichever is less stringent.

1.6. A monitoring plan if required by the division.

1.7. Consideration of post disposal land use and landowner requests when the closure plan is developed.

2. During closure operations, the operator shall maintain the disposal facility to protect fresh water, public health, safety and the environment.

3. Location of the closed disposal facility shall be documented with the county recorder's office.

4. The bond for the disposal facility will be released when the division approved closure plan requirements have been met, as determined by the division.

R649-9-13. Variances from Requirements and Standards.

Requests for approval of a variance from any of the requirements or standards of these rules shall be submitted to the director in writing and provide information as to the circumstances that warrant approval of the requested variance and the proposed alternative means by which the requirements or standards will be satisfied.

KEY: oil and gas law
Date of Enactment or Last Substantive Amendment: [~~June 2, 1998~~]2013
Notice of Continuation: February 3, 2012
Authorizing, and Implemented or Interpreted Law: [~~40-6-1 et seq.~~]40-6-5(3)

Public Safety, Driver License
R708-32
Uninsured Motorist Database

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 37554
FILED: 04/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This purpose of this change is to repeal the existing Uninsured Motorist Identification Database rule and reenact the rule to include information regarding web service or Internet insurance information verification as required under Section 31A-22-315.5 (S.B. 244, 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This repeal and reenactment adds language to the rule to provide for automobile insurance information verification responses via web services as required under Section 31A-22-315.5 in addition to current reporting requirement under Section 31A-22-315. It also removes the current insurance verification responses and incorporates by reference a document listing the various responses that may be received from an insurance inquiry.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-22-315.5 and Section 41-12a-803 and Section 41-12a-805

MATERIALS INCORPORATED BY REFERENCES:
♦ Adds Insurance Query Responses, published by Utah Driver License Division, 04/25/2013

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no cost or savings to state budget because this change is provided by the third party contractor.
♦ LOCAL GOVERNMENTS: There is no cost or savings to local government because local government does not participate in this program.
♦ SMALL BUSINESSES: There may be some costs to insurance companies to provide automobile insurance information under Section 31A-22-315.5 via web services. However, any costs associated with the web services are associated with the statute, not the rule.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There may be some costs to insurance companies to provide automobile insurance information under Section 31A-22-315.5 via web services. However, any costs associated with the web services are associated with the statute, not the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs to law enforcement agencies or financial institutions as defined in Section 7-1-103 because they currently receive insurance information from the uninsured motorist database and the additional web service insurance information will be provided at no cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the fiscal impact on businesses and determined some insurance companies may incur costs to establish a web service to provide insurance information as required under Section 31A-22-315.5.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jill Laws by phone at 801-964-4469, by FAX at 801-964-4482, or by Internet E-mail at jlaws@utah.gov
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/24/2013

AUTHORIZED BY: Nannette Rolfe, Director

R708. Public Safety, Driver License.
[~~R708-32. Uninsured Motorist Database.~~
~~R708-32-1. Purpose.~~
~~The purpose of this rule is to define the procedures which will be used to administer the provisions of the "database" and the information and format in which it will be available.~~

~~R708-32-2. Authority.~~
~~This rule is promulgated in accordance with the Uninsured Motorist Database Program ("database") as required by Section 41-12a-803(7).~~

~~R708-32-3. Definitions.~~
~~(1) "Uninsured Motorist" means a driver who operates a vehicle in violation of the provisions of Title 41, Chapter 12a.~~
~~(2) "Database" means the Uninsured Motorist Identification Database created as per Section 41-12a-803.~~
~~(3) The terms "division" and "program" are as defined in Section 41-12a-802.~~

~~R708-32-4. Access.~~
~~(1) In accordance with Section 41-12a-803, insurance "status" information will be provided only to authorized personnel of federal, state and local governmental agencies who have access through dispatchers to the Driver License and Motor Vehicle Division's computer information screens (1027 and 1028) and to financial institutions, as defined in Section 7-1-103, for the purpose of protecting a bona fide security interest in a motor vehicle.~~
~~(2) Authorized personnel seeking information from this database will be limited to receiving the following responses:~~
~~(a) YES = Strong indication of mandatory insurance in force;~~
~~(b) NO = Strong indication mandatory insurance is not in force;~~
~~(c) EXEMPT = Vehicle is exempt from mandatory auto insurance, such as farm vehicles;~~
~~(d) NOT FOUND = Vehicle not part of insurance database; and~~
~~(e) NOT AVAILABLE = Communications with computer interrupted.~~
~~(3) Access to additional information other than "YES", "NO", "EXEMPT", "NOT FOUND," or "NOT AVAILABLE", shall be limited to the following persons who shall sign a Certificate of Understanding:~~
~~(a) Financial Responsibility Section Manager and employees;~~
~~(b) Driver License Division Director, Deputy Director, and Bureau Chiefs; and~~
~~(c) Other employees authorized by the Driver License Division Director, Deputy Director or Bureau Chiefs.~~
~~(4) Additional information, if available, may include:~~
~~(a) the vehicle owner's name and address;~~
~~(b) date of birth;~~
~~(c) driver license number;~~

~~(d) license plate number;~~
~~(e) vehicle identification number;~~
~~(f) insurance company name;~~
~~(g) policy number; and~~
~~(h) issue and expiration dates of the owner's vehicle insurance policy.~~

~~**KEY: uninsured motorist database**~~
~~**Date of Enactment or Last Substantive Amendment: August 8, 2006**~~
~~**Notice of Continuation: March 25, 2010**~~
~~**Authorizing, and Implemented or Interpreted Law: 41-12a-803(7)**~~**]**

R708-32. Uninsured Motorist Identification Database.

R708-32-1. Purpose.

The purpose of this rule is to establish procedures for administering and enforcing the uninsured motorist identification database program in accordance with Subsection 41-12a-803.

R708-32-2. Authority.

This rule is authorized by 41-12a-803.

R708-32-3. Definitions.

(1) Definitions in this rule are found in Subsection 41-12a-802.

R708-32-4. Access.

(1) In accordance with Section 41-12a-803, insurance information will be provided only to authorized personnel of:

(a) federal, state and local governmental agencies who have access through the Utah Criminal Justice Information System to Driver License and Motor Vehicle Division's computer information for law enforcement purposes;

(b) financial institutions, as defined in Section 7-1-103, for the purpose of protecting a bona fide security interest in a motor vehicle;

(c) the Driver License Division for the purpose of verifying automobile insurance coverage as authorized by the Division Director; and

(d) the Department of Motor Vehicle for the purpose of verifying automobile insurance coverage.

R708-32-5. Insurance Information.

(1) The insurance response may be retrieved from the uninsured motorist database or from a web service inquiry to insurance companies, whichever provides the most current and accurate information.

(2) Authorized personnel seeking information from this database will be limited to receiving responses which are adopted and incorporated within this rule by reference and are referred to in a document entitled, "Uninsured Motorist Database Query Responses".

(3) The Driver License Division, Utah Department of Public Safety, shall make available to authorized personnel for review and inspection at the division office, reception desk, 4501 South 2700 West, Salt Lake City, Utah 84130-0560 a copy of the "Uninsured Motorist Database Query Responses" document. Copies may be obtained in person or by written request to the Driver License Division Financial Responsibility Section at P.O. Box 144501, Salt Lake City, Utah 84114-4501.

KEY: uninsured motorist database
Date of Enactment or Last Substantive Amendment: 2013
Notice of Continuation: March 25, 2010
Authorizing, and Implemented or Interpreted Law: 41-12a-803; 31A-22-315.5

Public Safety, Driver License
R708-49
Temporary Identification Card

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 37555
FILED: 04/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to define the provisions for issuance of a Temporary Regular Identification card under Subsection 53-3-805(7) (H.B. 320, 2013 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule defines the provisions for issuing a Temporary Regular Identification card.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-3-805(7)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be a minimal cost to state budget to complete computer programming changes to the driver license computer system to allow the issuance of a Temporary Regular Identification card.
♦ LOCAL GOVERNMENTS: Local government does not issue Utah Identification cards and therefore is not affected.
♦ SMALL BUSINESSES: Small businesses do not issue Utah Identification cards and therefore are not affected.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule will allow certain individuals the opportunity to receive a temporary regular identification card to provide a six month time frame to gather the required documentation to complete the process to obtain a regular identification card.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the statutorily required fee for an identification card will also apply for the temporary identification card.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and determined it will not have a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jill Laws by phone at 801-964-4469, by FAX at 801-964-4482, or by Internet E-mail at jlaws@utah.gov
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/24/2013

AUTHORIZED BY: Nannette Rolfe, Director

R708. Public Safety, Driver License.
R708-49. Temporary Identification Card.
R708-49-1. Purpose.
The purpose of the rule is to set forth the provisions for the issuance of a temporary regular identification card.

R708-49-2. Authority.
This rule is authorized by Subsection 53-3-104(1)(b).

R708-49-3. Definitions.
(1) "Temporary Regular Identification card" means a temporary identification card issued by the Driver License Division to a qualified U.S. Citizen, Legal Permanent Resident Alien or U. S. National who has not provided all the required documents to obtain a completed identification card.

R708-49-4. Provisions.
(1) An applicant for an identification card as defined in Section 53-3-102(17) who is unable to provide all required documentary evidence under Subsection 53-3-804(2)(a), 53-3-804(2)(b), 53-3-804(2)(c), 53-3-804(2)(d) and 53-3-804(2)(i) at the time of application may be issued a temporary identification card if the applicant:
(a) pays the required application fee;
(b) is a U.S. Citizen, Legal Permanent Resident Alien or U.S. National; and
(c) has on file with the division a previous license or identification record that includes a digitized photo.
(2) The temporary identification card shall be a paper document and shall contain security features as determined by the division.
(3) The temporary identification card shall bear the applicant's digitized photo image and signature.
(4) The temporary identification card shall expire six months from the date of issue.

KEY: temporary identification card
Date of Enactment or Last Substantive Amendment: 2013
Authorizing, and Implemented or Interpreted Law: 53-3-805

Regents (Board of), Administration
R765-605
Utah Centennial Opportunity Program for Education

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37547
FILED: 04/29/2013

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 107 of the 2011 General Legislative Session changed the name of this program and made several substantive changes which require an amendment be made to Rule R765-605.

SUMMARY OF THE RULE OR CHANGE: The name of the program for which this rule was written has been changed along with needed language clarifying program guidelines, restrictions, and definitions. Outdated information has been removed. The application process for participating institutions has been simplified to allow schools to be more compliant allowing schools to receive funds for needy students in a more efficient manner. Also, the Cesar Chavez portion of the former program has been eliminated and therefore the rule needs to accommodate that.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-8-102 and Section 53B-8-106 and Title 53B, Chapter 13a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--This rule change does not have a cost or savings effect on state budgets since the changes only affect the program name, modifies definitions, and modifies reporting requirements of institutions utilizing program funds. No changes were made affecting monetary appropriations, spending, or reporting.

♦ LOCAL GOVERNMENTS: None--This rule change does not have a cost or savings effect on local government since the changes only affect the program name, modifies definitions, and modifies reporting requirements of institutions utilizing program funds. No changes were made affecting monetary appropriations, spending, or reporting.
♦ SMALL BUSINESSES: None--This rule change does not have a cost or savings effect on small businesses since the changes only affect the program name, modifies definitions, and modifies reporting requirements of institutions utilizing program funds. No changes were made affecting monetary appropriations, spending, or reporting.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule change does not have a cost or savings effect on any person other than small businesses, businesses or local government entities since the changes only affect the program name, modifies definitions, and modifies reporting requirements of institutions utilizing program funds. No changes were made affecting monetary appropriations, spending, or reporting.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule change does not have a cost or savings effect on individuals since the changes only affect the program name, modifies definitions, and modifies reporting requirements of institutions utilizing program funds. No changes were made affecting monetary appropriations, spending, or reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no negative fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronell Crossley by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/24/2013

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

R765. Regents (Board of), Administration.
R765-605. [~~Utah Centennial Opportunity Program for Education~~]Higher Education Success Stipend Program.
R765-605-1. Purpose.

To provide Board of Regents ("the Board") policy and procedures for implementing the Higher Education Success Stipend Program ("HESSP", or program) (formerly known as the Utah Centennial Opportunity Program for Education ("UCOPE," or "program"), UCA 53B-13a, enacted in H.B. 64 by the 1996 General Session of the Utah Legislature, as amended in 1997, 1998 and 2004 by S.B. 40, Cesar Chavez Scholarship Program and 2011 by S.B. 107, Higher Education Success Stipend Program ("HESSP").

R765-605-2. References.

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 102.

2.2. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 106.

2.3. Utah Code. Title 53B, Utah System of Higher Education, Chapter 13a.

2.4. State Board of Regents Policy R512, Determination of Resident Status.

R765-605-3. Effective Date.

These policies and procedures are effective [~~October 16, 2004~~]July 1, 2011.

R765-605-4. Policy.

4.1. Program Description - [~~UCOPE~~]HESSP is a State supplement to increasingly inadequate grant and work assistance from Federal Government student financial aid programs. In UCA 53B-13a-103(1), "the Legislature finds ["]that the prosperity, economic success, and general welfare of the people of Utah and[~~well-being~~] of the state are directly related to the educational levels and skills of the citizens of the state, and financial assistance, to bridge the gap between a financially needy student's resources and the cost of attendance at a Utah postsecondary institution,[~~that limited financial aid for students with demonstrated financial need to help finance costs of attendance at Utah postsecondary institutions~~] is a necessary component for ensuring access to postsecondary education and training[~~as the state enters its second century of statehood~~]".[~~Program funds may be used for either grants or work-study awards to students with demonstrated financial need, with no more than 3.0% of funds allocated to an eligible institution permitted to be used for administrative costs. These are the only purposes for which program funds may be used.~~]

4.2. Award Year - The award year for [~~UCOPE~~]HESSP is the twelve-month period [~~designated by an eligible institution,~~] coinciding [~~approximately~~]with the state fiscal year beginning July 1 and ending June 30.[~~An institution may choose to have its Summer enrollment period as either the first or the final enrollment period of the award year for UCOPE purposes.~~]

4.3. Institutions Eligible to Participate - Eligible institutions include the [~~ten~~]eight institutions of the Utah System of Higher Education, [~~and~~]Utah private, nonprofit postsecondary institutions which are accredited by a regional accrediting organization recognized by the Board, and the Utah College of Applied Technology campuses.

These are the only institutions eligible to participate. For purposes of this section, the Board recognizes the Northwest Association of Schools and Colleges as the accrediting organization. Utah private nonprofit postsecondary institutions accredited by the Northwest Association of Schools and Colleges are Brigham Young University, Westminster College and LDS Business College.

4.4. Students Eligible to Participate - To be eligible for grant or work-study assistance from [~~UCOPE~~]HESSP funds, a student must:

4.4.1. [~~B~~]be a resident student of the State of Utah under UCA 53B-8-102 and Board Policy R512 or exempt from paying the nonresident portion of total tuition under Utah Code Section 53B-8-106. For purposes of this section, in addition to the qualification methods set forth in Policy R512, an institution may recognize a student, other than a nonimmigrant alien, as a resident student of the State of Utah if the student graduated from a Utah high school within 12 months of enrolling in the institution[~~.~~]; and

4.4.2. [~~B~~]be unconditionally admitted and currently enrolled in an eligible institution on at least a half-time basis as defined in Federal regulations applicable to Title IV of the Higher Education Act, in a post-high school program of at least nine months duration, leading to an Associate or Bachelor's degree, or to a diploma or certificate in an applied technology or other occupational specialty. This does not include unmatriculated students or students enrolled in postbaccalaureate programs or in remedial or developmental programs to prepare for admittance to a degree, diploma, or occupational certificate program[~~.~~]; and

4.4.3. [~~B~~]be maintaining satisfactory academic progress, as defined by the institution, toward the degree, diploma, or certificate objective in which enrolled[~~.~~]; and

4.4.4. [~~M~~]meet all requirements of general eligibility for Federal Higher Education Act Part IV Student Financial Aid Programs, as defined in applicable U. S. Department of Education Regulations and the current edition of the Department of Education Student Aid Handbook[~~.~~]; and

4.4.5. [~~H~~]have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the Federal need analysis process for Higher Education Act Title IV student financial assistance programs[~~, and, to qualify for a Cesar Chavez Scholarship, have a family income less than 200% of the federal poverty guideline issued each year by the U.S. Department of Education for the family size~~].

4.5. Program Administrator - The program administrator for [~~UCOPE~~]HESSP is the Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner, under executive direction of the Commissioner of Higher Education.

4.6. Determination of Funds Available for The Program - Funds available for [~~UCOPE~~]HESSP allotments to institutions may come from specifically earmarked state appropriations, from the statewide student financial aid line item appropriation to the Board, or from other sources such as private contributions. Amounts available for allotment each year are determined as follows:

4.6.1. Consistent with the original purposes of the Statewide Student Financial Aid line item appropriation to the Board, funds appropriated in the line item [~~are~~]shall be applied in the following priority order:

4.6.1.1. First priority is given to matching funds for Utah System of Higher Education institutional awards from the Federal Government for campus-based Federal Perkins Loan Program capital contributions, Federal Supplemental Educational Opportunit[~~ies~~]y Grant Program funds, and partial matching for the Federal[~~College~~] Work[~~-~~][-]Study Program.

4.6.1.2. Second priority is given to providing the required state match for allocations of Leveraging Educational Assistance Partnership Program funds to the State of Utah.

4.6.1.3. All remaining funds are used for [~~UCOPE~~]HESSP.

4.6.2. All funds appropriated by specific legislation, or in a specific line item for [~~UCOPE~~]HESSP, and any funds from other sources contributed for [~~UCOPE~~]HESSP, are added together with funds available for [~~UCOPE~~]HESSP pursuant to subsection 4.6.1, to determine the total amount available for the program.

4.7. Allotment of Program Funds [~~T~~]to Institutions.

4.7.1. [~~The chief executive officer or chief student services officer of an eligible institution wishing to participate in UCOPE is required to submit to the program administrator a letter of intent to participate by the 15th of May preceding the beginning of the fiscal year (July 1 through June 30), and to include in the letter of intent~~]Annually, the program administrator will request Federal Pell Grant disbursement data by March 1st. The director of financial aid of an eligible institution will demonstrate intention to continue participation in HESSP by submitting to the program administrator a certification, subject to audit, of[~~:~~] (a) the total dollar amount of Federal Pell Grant funds awarded in the most recent completed award year to all students at the institution[~~;~~] and (b) the total dollar amount of Pell Grant funds awarded specifically to students at the institution who were resident students of the state of Utah under UCA 53B-8-102 and Board Policy R512.

4.7.2. Failure to submit [~~its letter of intent with the required Pell Grant information by the specified~~]the certification required in 4.7.1 by the requested date constitutes an automatic decision by an eligible institution not to participate in the program for the [~~specifie~~]next fiscal year.

[~~4.7.3. An eligible institution which submits a qualifying letter of intent by the specified date for a specific fiscal year is a participating institution for that fiscal year.~~

] 4.7.[~~4~~]3. Allotment of program funds to participating institutions is in the same proportion as the amount of Federal Pell Grant funds received by each participating institution for resident undergraduate students bears to the total of such funds received for such students in the most recently completed award year by all participating institutions.

4.7.[~~5~~]4. The program administrator will send[~~s~~] official notification of [~~its~~]each participating institution's allotment, together with a [~~program participation agreement, and~~]blank [~~copies~~]copy of the format for the institutional [~~UCOPE~~]HESSP performance report[~~s~~] to be submitted within 30 days of the end of the applicable fiscal year, to the [~~chief executive officer~~]director of financial aid of each participating institution[~~, by the 20th of May preceding the~~] each fiscal year.

4.8. [~~Annual~~]Institutional Participation Agreement[~~s~~] - [~~To receive UCOPE funds for an award year, a~~]Each participating institution [~~is required to submit a participation agreement, signed by the chief executive officer, accepting the funds and agreeing~~]will enter into a written agreement with the program administrator, or assigned designee, agreeing to abide by the program policies, accept and disburse funds per program rules, provide the required report each year and retain documentation for the program to support the awards and

actions taken. By accepting the funds, the participating institution agrees to the following terms and conditions:

4.8.1. Use of Program Funds Received by the Institution.

4.8.1.1. The institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allotted to it for the award year in a budget for student financial aid administrative expenses of the institution, and will expend all funds so budgeted before the end of the state fiscal year for which allotted.

[~~4.8.1.2(a). For the 1996-97 award year and award years 2000-01 and 2001-02, if the institution's allotment for the fiscal year is $100,000 or more, the institution will place at least 30% of the total amount of program funds allotted to it for the award year in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.9 herein). For award years 1997-98 through 1999-2000, if the institution's allotment for the fiscal year is $50,000 or more, the institution will place at least 50% of the total amount of program funds allotted to it in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under FWSP regulations or in jobs provided in accordance with Section 4.9.~~

] 4.8.1.2[~~(b)~~](a). For any award year, the institution may, at its option, place all or any portion of its allotted [~~UCOPE~~]HESSP funds in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with [~~UCOPE~~]HESSP Work-Study Program [~~(UWSP)~~](HWSP) policies (Section 4.[~~0~~]9 herein). The State Legislature has determined that need-based work-study stipends be given strong emphasis.

4.8.1.2[~~(c)~~](b). Work-study payments from the institution's [~~UCOPE~~]HESSP work-study budget, for jobs under either FWSP regulations or [~~U~~]HWSP policies, will be counted as [~~UCOPE~~]HESSP awards for purposes of subsection 4.8.2.3.

4.8.1.3. All work-study jobs provided using [~~UCOPE~~]HESSP funds from the budget pursuant to this subsection, including those established under FWSP regulations, will be identified to the recipient as [~~UCOPE~~]HESSP work-study awards. No portion of the institution's [~~UCOPE~~]HESSP allotment may be used as institutional match for Federal Work-Study Program allocations.

4.8.1.4. The institution will place the total remainder of program funds allotted to it for the award year, after amounts budgeted pursuant to subsections 4.8.1.1 and 4.8.1.2, in a budget to be used only for payment of [~~UCOPE~~]HESSP grants to eligible students during and for periods of enrollment within the award year. Grants awarded from this budget will be identified to the recipient as [~~Utah Centennial Opportunity Program~~]Higher Education Success Stipend Grants.

4.8.1.5. The institution may not carry forward or carry back from one fiscal year to another [~~up to 10% of the amount~~]any of its [~~UCOPE~~]HESSP allocation for [~~the~~]a fiscal year.[~~, or a larger percentage if~~] Any exception to this rule must be approved in advance by the [~~UCOPE~~]HESSP program administrator.[~~, except for any~~] The institution will inform the program administrator immediately if it determines it will not be able to utilize all program funds allotted to it for an award year. Unused funds may be returned to the program administrator as directed. Returned funds will be re-distributed to the other eligible institutions as supplemental HESSP allocations for disbursement during the same award year. The portion of HESSP allocations budgeted for administrative expenses pursuant to Section 4.8.1.1 will not be part of any carryover.

4.8.2. Determination of Awards to Eligible Students.

4.8.2.1. Student Cost of Attendance budgets will be established by the institution, in accordance with Federal regulations applicable to student financial aid programs under Title IV of the Higher Education Act as amended, for specific student categories authorized in the Federal regulations, and providing for the total of costs payable to the institution plus other direct educational expenses, transportation and living expenses.

4.8.2.2. [~~UCOPE~~]HESSP work-study or grant amounts will be awarded based on financial aid information and cost of attendance budgets at the time the awards are determined, with first priority given to eligible students who [~~qualify for Federal Pell Grant assistance~~]demonstrate the greatest financial need.

4.8.2.3. The total amount of any [~~UCOPE~~]HESSP grant and/or work-study award to an eligible student in an award year will not exceed $5,000, and the minimum [~~UCOPE~~]HESSP grant and/or work-study award to an eligible student will be $300, except that:

4.8.2.3(a). the minimum amount may be the amount of funds remaining in the institution's allotment for the award year in the case of the last eligible student receiving a [~~UCOPE~~]HESSP grant award for the year; and

4.8.2.3(b). An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine months, or 900 clock hours) will be awarded a minimum or maximum grant amount in proportion to the portion of the normally-expected period of enrollment represented by the quarter(s), semester(s) or other defined term for which the student is enrolled.

4.8.2.4. [~~UCOPE~~]HESSP Grants and work-study stipends will be awarded and packaged on an annual award year basis. Grants will be paid one quarter or semester at a time (or in thirds, if applicable to some other enrollment basis such as total months or total clock hours), contingent upon the student's maintaining satisfactory progress as defined by the institution in published policies or rules. Work-study wages will be paid regularly as earned, provided the student is continuing to make satisfactory progress.

4.8.2.5. All awards under the program will be made without regard to an applicant's race, creed, color, religion, ancestry, or age.

4.8.2.6. Students receiving financial aid under the program will be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget.

4.8.2.6(a). The student's signature on the Free Application for Federal Student Aid satisfies this requirement.

4.8.2.6(b). If the institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used [~~UCOPE~~]HESSP grant or work-study funds for other purposes, the institution will disqualify the student from [~~UCOPE~~]HESSP eligibility beginning with the quarter, semester, or other defined enrollment period after the one in which the determination is made.

4.8.2.7. In no case will the institution initially award program grants or work-study stipends or both in amounts which, with Federal [~~Stafford, Ford~~]Direct, Federal PLUS, and/or Federal Perkins Loans and other financial aid from any source, both need and merit-based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.

4.8.2.8. If, after the student's aid has been packaged and awarded, the student later receives other financial assistance (for example, merit or program-based scholarship aid) or the student's cost of attendance budget changes, resulting in a later overaward of more than $500, the institution will appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.

[~~4.8.3. Unit-Record Information - The institution agrees to cooperate with the program administrator and the Commissioner of Higher Education in development of a unit-record data base on student financial aid and related demographic information, to be used for: (a) research into the effects of student financial aid on students' access to and participation in postsecondary education and training; and (b) planning and modifying the design of the program.~~

] 4.8.[~~4~~]3. [~~Notification and~~]Reports - The institution will [~~inform the program administrator immediately if it determines it will not be able to utilize all program funds allotted to it for an award year, and will~~]submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program-relevant information as the board may reasonably require.

4.8.[~~5~~]4. Records Retention and Cooperation in Program Reviews - The institution will cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and will maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three year retention period, an audit or program review exception is pending resolution, the institution will retain records for the award year involved until the exception has been resolved.

[~~4.8.6. Dissemination of Employment Opportunity Information - The institution will cooperate with the program administrator in disseminating to its students periodic information provided by the board, regarding employment opportunities determined from marketplace surveys.~~

] 4.9. [~~UCOPE~~]HESSP Work-Study Program Guidelines - If an institution elects to utilize its [~~UCOPE~~]HESSP Work-Study funds for the [~~Utah~~]HESSP Work-Study Program [~~(UWSP)~~](HWSP) instead of in accordance with Federal Work-Study (FWSP) regulations, the following guidelines apply.

4.9.1. Institutional Jobs - The institution may establish designated [~~U~~]HWSP institutional jobs on campus or in other institutional operating sites, and administer such jobs in accordance with the following conditions.

4.9.1.1. The job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time institutional employee in the three months immediately prior to establishment of the [~~U~~]HWSP institutional job.

4.9.1.2. The hourly wage for the [~~U~~]HWSP institutional job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the institution in equivalent positions in the institution's personnel system[~~, unless the hourly wage of equivalent positions is less than the current Federal minimum wage~~].

4.9.1.3. The institution may pay up to one hundred percent of the hourly wage for the institutional job from its [~~UCOPE~~]HESSP work-study budget established pursuant to subsection 4.9.1, provided the total wages paid to a student for the job from [~~UCOPE~~]HESSP and any other institutional funds do not exceed the amount of the award to the student for the award year.

4.9.2. School Assistant Jobs - The institution may establish designated [~~U~~]HWSP school assistant jobs for volunteer tutors, mentors, or teacher assistants, to work with educationally disadvantaged and high risk school pupils, by contract with individual schools or school districts, and administer such jobs in accordance with the following conditions[~~.~~]:

4.9.2.1. The hourly wage for the [~~U~~]HWSP school assistant job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the school or school district in equivalent positions in its personnel system[~~, unless the hourly wage of equivalent positions is less than the current Federal minimum wage~~].

4.9.2.2. The institution may pay up to one hundred percent of the hourly wage for the job from its [~~UCOPE~~]HESSP work-study budget established pursuant to subsection 4.9.2 , provided the total wages paid to a student for the job from any source do not exceed the amount of the award to the student for the award year.

4.9.3. Community Service Jobs - The institution may establish designated [~~U~~]HWSP community service jobs with volunteer community service organizations certified by the program administrator on advice of the Utah Commission on Volunteers, and administer such jobs in accordance with the following conditions[~~.~~]:

4.9.3.1. The hourly wage for the [~~U~~]HWSP community service job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system[~~, unless the hourly wage of equivalent positions is less than the current Federal minimum wage~~].

4.9.3.2. The institution may pay up to one hundred percent of the hourly wage for the job from its [~~UCOPE~~]HESSP work-study budget established pursuant to subsection 4.9.3, provided the total wages paid to a student for the position from any source do not exceed the amount of the award to the student for the award year.

4.9.4. Matching Jobs - The institution may establish designated [~~U~~]HWSP matching jobs by contract with government agencies, private businesses, or non-profit corporations, and administer such jobs in accordance with the following conditions[~~.~~]:

4.9.4.1. The matching job may not involve any religious or partisan political activities, or be with an organization whose primary purpose is religious or political.

4.9.4.2. The matching job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time employee in the government agency, private business, or non-profit corporation in the three months immediately prior to establishment of the [~~U~~]HWSP matching job.

4.9.4.3. The hourly wage for the [~~U~~]HWSP matching job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system[~~, unless the hourly wage of equivalent positions is less than the current Federal minimum wage~~].

4.9.4.4. The institution may pay up to fifty percent of the hourly wage for the job from its [~~UCOPE~~]HESSP work-study budget established pursuant to subsection 4.9.4, provided the total wages (including the employer-paid portion) paid to the student do not exceed the amount of the award to the student for the award year.

4.9.5. Institutions are strongly encouraged to place students, when possible, in [~~U~~]HWSP jobs which have a relationship to the student's field of study or training.

4.9.6. Institutions or the employing organization must pay the employer portion of required Federal Taxes (FICA, FUI, and SUI), from institutional funds, for the students who are paid for a work-study award.

4.9.[~~6~~]7. If an institution employs students in work-study jobs or other institutional jobs cumulatively over time to a point at which the institution is required to pay employee benefits other than the direct job wages for a [~~UCOPE~~]HESSP-funded work-study job, the institution is required to pay the costs of any such required employee benefits from institutional funds other than [~~UCOPE~~]HESSP-allotted funds.

~~[4.10. Cesar Chavez Scholarship - The Cesar Chavez Scholarship Program is part of the Utah Centennial Opportunity Program for Education.~~

~~4.10.1. Students Eligible - To qualify for a Cesar Chavez Scholarship, a student must:~~

~~4.10.1.1. be an eligible student as defined in Section 53B-13a-102; and~~

~~4.10.1.3. have a family income less than 200% of the federal poverty guideline for the family size.~~

~~4.10.2. Scholarship Amounts - Cesar Chavez Scholarships shall be awarded in the following amounts:~~

~~4.10.2.1. if the scholarship recipient is enrolled at a public institution, an amount not to exceed the total of resident tuition and general fee charges; or~~

~~4.10.2.2. if the scholarship recipient is enrolled at a private, nonprofit institution, an amount not to exceed the total of tuition and general fee charges, but a scholarship for a student enrolled at a private, nonprofit institution may not exceed the maximum program grant established by the board for the fiscal year.~~

~~4.10.3. Allocation of UCOPE Funds to Cesar Chavez Scholarships - The board may allocate up to 10% of the money appropriated to the board for the Utah Centennial Opportunity Program in Education for the Cesar Chavez Scholarship Program.~~

]

KEY: financial aid, higher education

Date of Enactment or Last Substantive Amendment: [~~September 1, 2005~~]2013

Notice of Continuation: May 9, 2008

Authorizing, and Implemented or Interpreted Law: 53B-8-102; 53B-13a

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Workforce Services, Employment Development

R986-100-118a

Improper Access of Public Assistance Benefits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 37541

FILED: 04/25/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with statutory changes in H.B. 209 from the 2013 General Session.

SUMMARY OF THE RULE OR CHANGE: Prohibits recipients of assistance under the Family Employment Plan from accessing funds through an electronic benefit transfer in a place that exclusively or primarily sells intoxicating liquor, allows gambling, or provides adult entertainment where performers disrobe or perform unclothed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-302(5)(b)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: This applies to federally-funded programs so there are no costs or savings to the state budget.

♦ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to the local government.

♦ SMALL BUSINESSES: There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs to persons other than small businesses, businesses or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes for any affected persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-118a. Improper Access of Public Assistance Benefits.

(1) A client may not access assistance payments through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that;

(a) exclusively or primarily sells intoxicating liquor,

(b) allows gambling or gaming, or

(c) provides adult-oriented entertainment where performers disrobe or perform unclothed.

(2) Violation of the provisions of subsection (1) of this section will result in;

(a) a warning letter for the first offense,

(b) a one month disqualification for the second offense, and

(c) a three month disqualification for the third and all subsequent offenses.

KEY: employment support procedures
Date of Enactment or Last Substantive Amendment: [~~July 25, 2012~~]2013
Notice of Continuation: September 8, 2010
Authorizing, and Implemented or Interpreted Law: 35A-3-101 et seq.; 35A-3-301 et seq.; 35A-3-401 et seq.

Workforce Services, Housing and Community Development
R990-101
Qualified Emergency Food Agencies Fund (QEFAF)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 37542
FILED: 04/25/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to describe what poundage is eligible for distributions from the Qualified Emergency Food Agencies Fund (QEFAF).

SUMMARY OF THE RULE OR CHANGE: This proposed amendment makes many nonsubstantive changes to clean up the rule and correct citations. It also provides for what claims can be paid from the QEFAF.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-8-1004 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no costs or savings to the state budget as these changes merely explain applicable state law. It is anticipated that the amount of funds paid will remain the same and in any event, will be within current funding levels.
♦ LOCAL GOVERNMENTS: There will be no costs or savings to any local government to comply with this change as this rule reflects current state law.
♦ SMALL BUSINESSES: There will be no costs or savings to any small business as these changes reflect current state law and Department practice.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs or savings to persons other than small businesses, businesses, or local government entitles because these proposed amendments reflect current law and practices.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes for any affected persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
HOUSING AND COMMUNITY DEVELOPMENT
140 E BROADWAY
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Jon Pierpont, Executive Director

R990. Workforce Services, Housing and Community Development.

R990-101. Qualified Emergency Food Agencies Fund (QEFAF).

R990-101-1. Designation as a Qualified Emergency Food Fund Agency.

[~~A.~~](1) A qualified emergency food agency, hereinafter referred to as Qualified Agency, is an organization that is[~~:~~];

(a) exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code[~~;~~], or

(b) an association of governments or a municipality which, as part of its activities operates a program that has as the program's primary purpose to;

(i) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons[~~;~~], or

(ii) provide food and food ingredients directly to low-income persons.

(2) For initial designation as a Qualified Agency, an organization [~~shall~~]must file an application with, and must be approved by, the State Community Services Office (SCSO) [~~and must be approved as a qualified emergency food agency~~]before receiving distributions under Utah Code Section [~~9-4-1409~~]35A-8-1009. The application form and instructions are available on the SCSO Website at http://housing.utah.gov/scso/qefaf.[~~html~~]

[~~B.~~](3) After initial designation as a [~~qualified emergency food agency~~]Qualified Agency, a non-profit 501(c)(3) organization must maintain a current Charitable Solicitations Permit issued by the Utah Department of Commerce, Division of Consumer Protection per Utah Code Section 13-22-6 or be exempt under Utah Code Section 13-22-8. An association of governments or a municipality must continue to operate a program which has, as the program's primary purpose to [~~i~~)] warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons; or [~~ii~~)] provide food and food ingredients directly to low-income persons.

[~~C.~~](4) All entities applying to be designated as a Qualified Agency[~~organizations shall~~] must submit a [~~current Board Roster~~]list of current members of its Board of Directors and contact information for the individual primarily responsible for maintaining the organization's financial records. This information should be submitted with the signed copies of the Memorandum of Understanding each year.

R990-101-2. Use of Funds.

Funds received from the [~~Qualified Emergency Food Agency Fund~~]QEFAF program must be expended by the Qualified Agency only for purposes related to[~~: a)~~] warehousing and distributing food and food ingredients to other agencies and organizations providing food and food ingredients to low-income persons[~~; or b)~~], or providing food and food ingredients directly to low-income persons.

R990-101-3. Allowable Expenditures.

[~~A.~~](1) Warehousing - Expenditures directly related to receiving, sorting, weighing, handling, and storing of food and food ingredients, including direct staff costs for warehousing activities, scales, fork lifts, pallet jacks, shelving, refrigeration equipment, supplies for food storage, and space costs associated with the warehousing activity such as utilities, insurance, cleaning supplies, pest control, and minor repairs and maintenance.

[~~B.~~](2) Distributing - Expenditures directly related to packaging and transporting food and food ingredients to other agencies and organizations which provide food and food ingredients to qualified low-income individuals and households, including direct staff costs, transportation equipment costs such as refrigeration units, insurance on vehicles used exclusively to pick up and drop off food and food ingredients, fuel, licensing, repairs and maintenance.

[~~C.~~](3) Providing - Expenditures directly related to providing food and food ingredients directly to low-income individuals and households, including direct staff costs for client intake, case management, meal preparation and/or delivery of meals to home-bound clients or congregate meal sites; operational expenditures, including telephones, computer systems used to track client eligibility, food intake and distribution; staff and volunteer training costs such as food safety training; food handler's permits; and other direct costs which are reasonable and necessary.

[~~D.~~](4) Direct staff costs - is defined as salaries and wages, employer's payroll taxes, and fringe benefits for staff directly involved in collecting, transporting, receiving, weighing, sorting, handling, and packaging food and food ingredients; dispensing food and food ingredients directly to eligible clients; preparing, serving and/or delivering meals to eligible clients; and providing case management services directly to eligible food bank clients. Personnel costs for staff who also work in non-QEFAF supported activities must be supported by time and activity reports.

[~~E.~~](5) Food and food ingredients - reasonable and necessary purchases of food and food ingredients that are warehoused, distributed, and/or provided directly to eligible low-income individuals and households is allowable.

[~~F.~~](6) Administrative Expenditures - QEFAF funds expended for administrative costs shall not exceed 5% of the total distributions received under the QEFAF program for any fiscal year. Any QEFAF funds unexpended as of the end of Qualifying Agency's fiscal year should be clearly identified and treated as temporarily restricted funds.

R990-101-4. Non-Allowable Expenditures.

Expenditures that do not directly pertain to warehousing, distributing, or providing food and food ingredients to low-income persons, other than the maximum 5% administrative costs as provided in R990-101-3(6)[~~mentioned above~~], are not allowed. Specifically, expenditures associated with soliciting or promoting cash or food donations, recognizing donors and volunteers, and transportation costs other than picking up and delivering food and food ingredients, are not allowed. [~~Any other e~~]Expenditures not specifically listed [~~under the sections above~~]in R990-101-3 are not allowed.

R990-101-5. Submission of Claims.

[~~A.~~](1) A Qualified Agency cannot submit more than one claim per month.[~~ Claims shall be submitted no more frequent than monthly.~~] Claims must be submitted[~~ by the Qualified Agency~~] online using the Web Grants system at the following website address: http://www.webgrants.community.utah.gov

[~~B.~~](2) Claims [~~shall~~]must be based on the number of eligible pounds of food donated to Qualified Agency during the state fiscal year[~~ beginning July 1, 2009 and ending June 30, 2010~~] valued at the rate of $0.12 per pound.

R990-101-6. Limited Funds Available.

Funds available under the [~~Qualified Emergency Food Agency Fund~~]QEFAF program are limited. In the event funds deposited into the [~~Qualified Emergency Food Agency Fund~~]QEFAF are insufficient to meet the claims for distribution received, the [~~State Community Services Office (~~]SCSO[~~) shall~~] will make distributions to Qualified Agencies in the order [~~that SCSO receives~~]in which the claims are received by SCSO. The time [~~submitted~~]of submission, as recorded in the Web Grants system, [~~shall~~]will be used to determine the order in which claims are received by SCSO.

R990-101-7. Eligible Pounds.

(1) Eligible pounds [~~shall~~]means the aggregate number of pounds of food and food ingredients, as defined in Utah Code Section 59-12-102 that are [~~a)~~]donated to the Qualified Agency [~~on or after July 1, 2009;~~]during the fiscal year and [~~b)~~]for which Utah sales or use tax was paid by the person donating the food or food ingredients.

(2) Eligible pounds cannot be carried over to a succeeding fiscal year.

(3) Food or food ingredients procured through corporate donations, the grocery rescue program, or directly from the manufacturer are not eligible poundage for the QEFAF program.

(4) Produce donated from home gardeners, commercial gardeners and gardening programs, as well as meat, poultry, eggs and other food and food ingredients donated by farmers, ranchers and others, are not eligible poundage for the QEFAF program.

(5) Once eligible poundage of food and food ingredients has been reported by one Qualified Agency, poundage shared with other community partners cannot be claimed a second time.

(6) It is the responsibility of the Qualified Agency to know and properly document the source of all donated poundage claimed.

R990-101-8. Recordkeeping Requirements.

[~~A.~~]Each Qualified Agency [~~agrees to~~]must maintain;

(1) receipts and other original records for donations of food and food ingredients, including schedules and work papers supporting claims made under the OEFAF program[~~Qualified Emergency Food Agency Fund program. Such records must be maintained~~] for a period of [~~three~~]five years following the date of the [~~last refund for fiscal year ending June 30, 2010.~~]claim,

[~~B. Qualified Agency agrees to maintain~~](2) a financial management system that provides accurate, current, and complete disclosure of the receipt and disbursements of all QEFAF funds, including accounting records that are supported by source documentation sufficient to determine that QEFAF funds were expended only for purposes as stated in Utah Code Section 35A-8-1009 and [~~the Use of Funds section above.~~]R990-101-2, and

[~~C. Qualified Agency agrees to maintain~~](3) effective control and accountability for all QEFAF funds and all property, equipment, and other assets acquired with QEFAF funds. Qualified Agency agrees to adequately safeguard all such assets and assure they are used solely for authorized purposes. Such records must be maintained by Qualified Agency for a period of five years following the date of the claim[~~last refund for fiscal year ending June 30, 2010~~].

R990-101-9. Monitoring.

SCSO will monitor Qualified Agency['~~s~~] claims and may conduct one or more site visits to inspect records supporting the pounds of food and food ingredients claimed. SCSO may also review financial records to determine that distributions received are expended in accordance with Utah Code Section 35A-8-1009(8) and rule R990-101-3. The Qualified Agency agrees to provide all information [~~needed~~]requested by SCSO in performing this monitoring responsibility and will make such records available, upon reasonable notice, for said monitoring.

R990-101-10. Overpayment Recoupment.

[~~A.~~](1) Amounts [~~claimed by~~]to a Qualified Agency under this agreement that are determined by audit to be ineligible for reimbursement because a) such claims were based on ineligible food or food ingredient donations; or b) lack of adequate documentation to support the total poundage of food or food ingredient donations claimed [~~shall~~]must be immediately returned to the State.

[~~B.~~](2) Expenditures of QEFAF funds determined by audit to be unallowable because [~~1)~~]the funds were used for purposes not specified above under [~~Use of Funds~~]R990-101-2[~~; or 2)~~]or expenditures which are not supported by adequate source documentation [~~shall~~]be[-];

(a) immediately returned to the [~~S~~]state[~~;~~], or[-]

(b) properly segregated in the Qualified Agency's accounting records and identified as temporarily restricted until such time as those funds are used for the purpose[~~d~~]s specified [~~under Use of Funds above~~]in R990-101-2 and R990-101-3.

R990-101-11. Training and Technical Assistance.

SCSO agrees to provide training and technical assistance to a Qualified Agency [~~in regards to~~]for help in accessing and submitting a claim online using the Web Grants system. The Qualified Agency is responsible for ensuring that its staff receives such training and assistance.

KEY: Qualified Emergency Food Agencies Fund, QEFAF, antipoverty programs, community action programs
Date of Enactment or Last Substantive Amendment: [~~June 1, 2012~~]2013
Authorizing, and Implemented or Interpreted Law: 35A-8-1004

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.

While the law does not designate a comment period for a **Change in Proposed Rule**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **Changes in Proposed Rules** published in this issue of the *Utah State Bulletin* ends June 14, 2013.

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 between paragraphs (**. . . . . .**) indicates that unaffected text, either whole sections or subsections, 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.

From the end of the 30-day waiting period through September 12, 2013, an 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 the **Change in Proposed Rule**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. 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** by the end of the 120-day period after publication, 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 Section 63G-3-303; 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

Alcoholic Beverage Control, Administration
R81-1-31
Duties of Commission Subcommittees

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 37363
FILED: 04/30/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The previous rule change did not address action items when a quorum of the full commission (four members) is present at subcommittee meetings. This change clarifies that if there are at least four members of the commission present at a subcommittee meeting in, the subcommittee may take action on agenda items.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to Section R81-1-31 define the duties of the two commission subcommittees -- the Compliance, Licensing and Enforcement Subcommittee and the Operations and Procurement Subcommittee. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the March 15, 2013, issue of the Utah State Bulletin, on page 4. 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 amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-1-607 and Section 32B-2-201.5

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--This rule filing simply makes the Department of Alcoholic Beverage Control (DABC) rules consistent with state statute.
♦ LOCAL GOVERNMENTS: None--This rule filing simply makes the DABC rules consistent with state statute.
♦ SMALL BUSINESSES: None--This rule filing simply makes the DABC rules consistent with state statute.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule filing simply makes the DABC rules consistent with state statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule filing simply makes the DABC rules consistent with state statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This rule filing simply makes the DABC rules consistent with state statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2013

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2013

AUTHORIZED BY: Sal Petilos, Executive Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-31. Duties of Commission Subcommittees.

(1) This rule is promulgated pursuant to Section 32B-2-201.5 and shall govern the duties of the two commission subcommittees, Compliance Licensing and Enforcement Subcommittee and the Operations and Procurement Subcommittee.

[~~(2) Duties reserved for the full commission: All major decisions, included but not limited to -- Granting of licenses and special use permits, establishing state stores~~](2) The Compliance Licensing and Enforcement Subcommittee will review and discuss items related to compliance, licensing and [~~adoption of formal rule making and policy.~~]enforcement and make recommendations to the full commission on those items.

(3) The [~~Compliance Licensing~~]Operations and [~~Enforcement~~]Procurement Subcommittee will review and discuss items related to [~~compliance, licensing~~]operations and [~~enforcement~~]procurement and make recommendations to the full commission on those items.

(4) [~~The~~]If a quorum of the full commission [~~may defer decision making to~~]is present, the subcommittee may act on all agenda action items[~~- related to licensing, compliance and enforcement not reserved to the full commission~~].

(5) [~~The Operations and Procurement Subcommittee will review and discuss items related to operations and procurement and make recommendations to the full commission on those~~]If a quorum of the full commission is not present, a recommendation on action items[~~-~~

~~(6) The full~~] can be presented to a quorum of the commission [~~may defer decision making to the subcommittee on all items related to Operations and Procurement not reserved to the commission in section.~~]for action without discussion if:

(a) A quorum of the subcommittee is present;

(b) There is a unanimous vote on the recommendation; and

(c) A member of the full commission does not request discussion on the items of recommendation.

([~~7~~]6) A subcommittee quorum is the majority of standing members.[~~Decision by subcommittee requires at least a majority vote of the quorum.~~]

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2013
Notice of Continuation: May 10, 2011
Authorizing, and Implemented or Interpreted Law: 32B-2-201(10); 32B-2-202; 32B-3-203(3)(c); 32B-1-305; 32B-1-306; 32B-1-307; 32B-1-607; 32B-1-304(1)(a); 32B-6-702; 32B-6-805(3); 32B-9-204(4); 32B-4-414(1)(b) and (c)

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 (Subsection 63G-3-304(1)).

As with a **Proposed Rule**, a **120-Day Rule** is preceded by a **Rule Analysis**. This analysis provides summary information about the **120-Day Rule** including the name of a contact person, justification for filing a **120-Day Rule**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (**. . . . . .**) indicates that unaffected text was removed to conserve space.

A **120-Day Rule** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-Day Rule** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-Day Rules** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-Day Rule**, it usually files a **Proposed Rule** at the same time, to make the requirements permanent. Comments may be made on the **Proposed Rule**. Emergency or **120-Day Rules** are governed by Section 63G-3-304; and Section R15-4-8.

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-509
Medicaid Autism Waiver Open Enrollment Process

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 37548
FILED: 04/29/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify legislative intent to implement the Medicaid Autism Waiver under H.B. 272, 2012 General Session.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies that children who are two years of age through six years of age are eligible to receive Medicaid services under the Autism Waiver if they meet other eligibility requirements. This change, therefore, extends eligibility for the waiver through six years of age. This amendment also makes other clarifications. (DAR NOTE: A corresponding proposed amendment is under DAR No. 37549 in this issue, May 15, 2013, of the Bulletin.)

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

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
JUSTIFICATION: To clarify the intent of the Legislature and to comply with H.B. 272, the Department needs to file this rule to allow children six years of age to receive Medicaid services under the Autism Waiver if they meet other eligibility requirements. At this time, only children who are two years of age through five years of age are eligible under the rule.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because this amendment neither creates new services nor eliminates current ones. All services are in accordance with legislative intent to allow children who are two years of age through six years of age to become eligible under the Autism Waiver, and are within appropriations approved by the 2012 Legislature.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund nor provide Medicaid services to Medicaid recipients.
♦ SMALL BUSINESSES: There is no impact to small businesses because this amendment neither creates new services nor eliminates current ones. All services are in accordance with legislative intent to allow children who are two years of age through six years of age to become eligible under the Autism Waiver, and are within appropriations approved by the 2012 Legislature.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because this amendment neither creates new

services nor eliminates current ones. All services are in accordance with legislative intent to allow children who are two years of age through six years of age to become eligible under the Autism Waiver, and are within appropriations previously approved by the 2012 Legislature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because this amendment neither creates new services nor eliminates current ones. All services are in accordance with legislative intent to allow children who are two years of age through six years of age to become eligible under the Autism Waiver, and are within appropriations approved by the 2012 Legislature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have no impact on business as it does not change the reimbursement for services.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

EFFECTIVE: 05/01/2013

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-509. Medicaid Autism Waiver Open Enrollment Process.

R414-509-1. Introduction and Authority.

(1) This rule defines the open enrollment process to enroll individuals in the Medicaid Autism Waiver program.

(2) This rule is authorized by Section 26-18-407. Waiver services are optional and provided in accordance with 42 CFR 440.225.

R414-509-2. Definitions.

(1) "Attrition" means the act of a waiver recipient leaving the waiver for any reason. Examples include the recipient moving out-of-state or the recipient turning [~~six~~]seven years of age.

(2) "Geographical Region" means a county or counties that are identified as belonging to one of the twelve Utah local health department districts.

(3) "Department" means the Department of Health.

(4) "Open enrollment" means the period during which the Department accepts waiver applications.

(5) "Opening" means the availability for an individual to participate in the Medicaid Autism Waiver program.

(6) "Waiver Operating Agency" means the Department of Human Services, which contracts with the Department of Health to implement defined waiver operations.

R414-509-3. Open Enrollment Eligibility Requirements.

To participate in the open enrollment process, the individual must meet the following eligibility requirements:

(1) The individual must have a diagnosis of an autism spectrum disorder from a licensed clinician. Diagnosis must be rendered by a clinician who is authorized under the scope of [~~their~~]his licensure;

(2) On the final day of the open enrollment period, the individual must:

(a) [~~have had his or her second birthday~~]Be at least two years of age;[~~ and~~]

(b) [~~b~~]Be not older than [~~five~~]six years and six months of age; and

(3) [~~The individual must m~~]Meet the financial eligibility requirement defined in the Medicaid Autism Waiver program.

R414-509-4. Open Enrollment Periods.

The Department will determine when open enrollment periods are held and for what duration based on the availability of funds for the Medicaid Autism Waiver program.

R414-509-5. Open Enrollment Procedures.

(1) The Department accepts the following means of application during open enrollment periods:

(a) Online application, with a time and date stamp confirming that the application was received within the open enrollment period;

(b) Facsimile, with a time and date stamp confirming that the application was received within the open enrollment period; and

(c) Mail, with the postmark on applications dated no sooner than the first day of the open enrollment period and no later than the last day of the open enrollment period.

(2) The number of individuals who may enroll in the waiver program during an open enrollment period is based on the availability of funds.

(3) The Department enrolls all individuals who meet the requirements of Section R414-509-3 if the number of applications does not exceed the number of available openings when the open enrollment period ends.

(4) If the number of applications exceeds the number of available waiver openings, then the Department shall:

(a) Compile all applications that it receives during the open enrollment period;

(b) Assign each application a random number;

(c) Create lists of randomly numbered applications by assigned geographical region;

(d) Assure that rural and underserved regions of the state are represented. The Department assigns waiver openings by geographical regions as follows:

(i) The Department allocates openings to each geographical region based on the percentage of population [~~of the State's population that~~]who reside[~~s~~] within the geographical region. The Department obtains population information from the most recent United States Census Report;

[~~(ii) if insufficient applications are present in a geographic region to fill all existing openings, the Department distributes the remaining waiver openings to an adjacent geographical region;~~

] (e) The Department [~~B~~]begins at the top of the randomized list and matches the number of available geographical openings with the same number of applications;

(i) If a selected applicant does not meet the eligibility criteria described in Section R414-509-3, the Department selects the next application on the randomized list;

(f) The Department [~~E~~]enrolls the selected individual[~~s~~] into waiver services.

(5) If there are not enough applications to fill all openings within a geographical region, the Department distributes the remaining waiver openings to other geographical regions.

R414-509-6. Procedures for Filling Openings Created by Attrition.

Attrition is ongoing in the Medicaid Autism Waiver program because the waiver serves a child only through the end of the month in which the child turns [~~six~~]seven years of age.

(1) To fill waiver openings due to attrition outside of open enrollment periods, the Department develops an applicant pool.

(a) The Department determines the number of applicants available in the applicant pool for each geographical region by using the process described in Subsection R414-509-5(4)(d)(i) to determine the number of waiver openings and factoring that number by four;

(b) The Department requires the Waiver Operating Agency to inform the Department of all waiver openings within ten business days;

(c) The Department identifies the geographical region where each opening occurs;

(d) The Department identifies the next randomly numbered application available within that geographical region;

(e) The Department matches the randomly numbered application to the applicant name, and based on the applicant's age, evaluates whether the applicant continues to be eligible for the waiver.

(i) To be eligible for waiver enrollment on the date of identification, the applicant may not exceed [~~five~~]six years and six months of age;

(ii) If the applicant is not eligible for waiver enrollment based on Subsection R414-509-6(1)(e)(i), the Department identifies the next randomly numbered application available within the geographical region until the Department can identify an eligible applicant.

(2) If there are not enough applications to fill all openings within a geographical region, the Department distributes the remaining waiver openings to other geographical regions.

([~~2~~]3) When the Department determines an open enrollment period is going to occur, it may suspend filling openings that arise through attrition.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: May 1, 2013
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **Proposed Rule**; continue the rule as it is by filing a **Notice of Review and Statement of Continuation (Notice)**; or amend the rule by filing a **Proposed Rule** and by filing a **Notice**. By filing a Notice, the agency indicates that the rule is still necessary.

Notices are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **Notices** are effective upon filing.

Notices are governed by Section 63G-3-305.

Career Service Review Office, Administration
R137-2
Government Records Access and Management Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 37535
FILED: 04/23/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63G-2-204(2)(d) and Section 63A-12-104 grant governmental entities authority to make rules in accordance with the Government Records Access and Management Act (GRAMA).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is essential because it enables the Career Service Review Office to manage requests for documents brought under GRAMA, codified at Title 63G, Chapter 2. This rule is necessary to assure that document requests are answered expeditiously and in compliance with GRAMA. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CAREER SERVICE REVIEW OFFICE
ADMINISTRATION
ROOM 1120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Akiko Kawamura by phone at 801-538-3047, by FAX at 801-538-3139, or by Internet E-mail at akawamura@utah.gov
♦ Annette Morgan by phone at 801-538-3048, by FAX at 801-538-3139, or by Internet E-mail at amorgan@utah.gov

AUTHORIZED BY: Akiko Kawamura, Administrator

EFFECTIVE: 04/23/2013

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-51
Dental, Orthodontia

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 37559
FILED: 04/30/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement by rule orthodontia services for

Medicaid recipients. In addition, 42 CFR 441.56 requires the Department to provide orthodontia services to individuals who are eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it sets forth eligibility and access requirements for the Orthodontia Program, and specifies service coverage and reimbursement methodology.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/30/2013

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-52
Optometry Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 37580
FILED: 05/01/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law. 42 CFR 440.225 also allows the Department, at its option, to provide optometry services. In addition, Title 58, Chapter 16a, authorizes optometrists within their scope of practice to provide covered medical services performed by physicians.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it sets forth eligibility requirements, service coverage, and reimbursement methodology for providers and recipients of optometry services.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 05/01/2013

Human Services, Recovery Services
R527-920
Mandatory Disbursement to Obligee Through Electronic Funds Transfer

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 37550
FILED: 04/29/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-11-107 gives the

Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Also, Section 62A-1-111 allows the Department of Human Services (DHS) the authority to adopt rules that the department considers necessary or desirable. Section 62A-11-704 requires ORS to distribute child support payments by electronic funds transfer, unless electronic funds transfer would result in a hardship to the office or a person or it is not likely the distribution would be made on a recurring basis.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the rule became effective.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because the statutes under which this rule is enacted are still in effect and the rule is reflected in current policy, practices, and procedures of the Office of Recovery Services/Child Support Services (ORS/CSS). The rule provides information as to when written information regarding electronic fund transfer options will be sent to an obligee on an ORS/CSS case. In addition, the rule provides an obligee with a time frame to provide a response as to his or her preferred method for receiving electronic payments and that ORS/CSS may enroll an obligee in a plan if no response is received. Lastly, the rule provides exceptions as to when mandatory disbursements through electronic funds transfer may be appropriate or approved.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8509, or by Internet E-mail at snance@utah.gov

AUTHORIZED BY: Liesa Corbridge, Director

EFFECTIVE: 04/29/2013

Public Safety, Criminal Investigations and Technical Services, Criminal Identification

R722-340

Emergency Vehicles

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 37532
FILED: 04/22/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 41-6a-310 and Subsection 53-1-108(1)(c) which allow the Commissioner of Public Safety to make rules about designating vehicles for part-time emergency use.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received during and since the last five-year review of this rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: When property or human life is in jeopardy, and the the prompt summoning of aid is essential to the preservation of human life or property, it justifies the operator of a vehicle to exercise driving privileges allowed to emergency vehicles. This rule specifies how vehicles can be designated as "authorized emergency vehicles" to aid in emergency situations, and needs to be continued.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES,
CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Amy Lightfoot by phone at 801-718-7901, by FAX at 801-965-4608, or by Internet E-mail at alightfoot@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 04/22/2013

Regents (Board of), Administration
R765-136
Language Proficiency in the Utah System of Higher Education

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 37551
FILED: 04/29/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: English is the official language of Utah and is the sole language of the government. Pursuant to Section 63G-1-201 institutions and the Utah Higher Education Assistance Authority (UHEAA) may use languages other than English for communication with non-English speakers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary since state law has not changed relative to the rule and the rule has served the Board of Regents well.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Courtney White by phone at 801-321-7241, by FAX at 801-321-7199, or by Internet E-mail at cwhite@utahsbr.edu

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

EFFECTIVE: 04/29/2013

Regents (Board of), Administration
R765-254
Secure Area Hearing Rooms

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 37552
FILED: 04/29/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: A Utah System of Higher Education (USHE) institution may establish a secure area to protect a hearing room as prescribed in Section 76-8-311.1 and prohibit or control in that area any firearm, ammunition, dangerous weapon, or explosive.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary since state law has not changed relative to the rule and the rule has served the Board of Regents well.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Courtney White by phone at 801-321-7241, by FAX at 801-321-7199, or by Internet E-mail at cwhite@utahsbr.edu

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

EFFECTIVE: 04/29/2013

Regents (Board of), Administration
R765-555
Policy on Colleges and Universities Providing Facilities, Goods and Services in Competition with Private Enterprise

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 37553
FILED: 04/29/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53B-7-101(9) allows for institutions to handle their own financial affairs under the general supervision of the Board. Institutions are expected to provide their campus communities appropriate services which are necessary for the education of students, or performance of basic research in accordance with the institution's mission as established by the Board. Institutions may provide other services to their campus communities even though such services are practically available elsewhere providing that the services satisfy reasonable educationally related needs of the campus community and provided such services are not advertised to the general public and are not generally provided to persons who are not members of the campus community.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary since state law has not changed relative to the rule and the rule has served the Board of Regents well.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Courtney White by phone at 801-321-7241, by FAX at 801-321-7199, or by Internet E-mail at cwhite@utahsbr.edu

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

EFFECTIVE: 04/29/2013

Regents (Board of), Administration
R765-605
Utah Centennial Opportunity Program for Education

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 37539
FILED: 04/24/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53B-8-13a outlines requirements for this grant program which is funded annually by the State Legislature and administered by the Office of the Commissioner of Higher Education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last amendment or five-year review either in support of or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Since this program is ongoing with participation and annual funding the continuation of this rule is required.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronell Crossley by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

EFFECTIVE: 04/24/2013

Regents (Board of), Administration
R765-606
Utah Leveraging Educational Assistance Partnership Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 37540
FILED: 04/24/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The following laws and regulations authorize and require this rule: Section 53B-7-103 (Board Designated State Educational Agent for Federal Contracts and Aid). Higher Education Act of 1965, as amended (i.e. U.S. Code Title 20, Chapter 28, Subchapter IV, Part F). 34 CFR Parts 600, 668 and 692. Education Department General Administration Regulations (EDGAR). This rule and authorizing statutes provides for the Leveraging Educational Assistance Partnership Program and incorporates by reference federal statutes and regulations governing this program which awards grants to eligible students attending public or private non-profit institutions of higher education or public postsecondary vocational institutions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received in support of or opposition to this rule since the last five-year review was filed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This program is still a valid program though at the present not funded to the state. In the event future funding becomes available the requirements of this rule will need to be followed. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronell Crossley by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

EFFECTIVE: 04/24/2013

Workforce Services, Unemployment Insurance
R994-202
Employing Units

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 37543
FILED: 04/25/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule defines terms listed in Section 35A-4-202 which describe employing units such as partnerships, corporations, LLCs, etc.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to define the terms found in the state statute so employers will understand which provisions might apply to various types of legal entitles. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Jon Pierpont, Executive Director

EFFECTIVE: 04/25/2013

Workforce Services, Unemployment Insurance
R994-208
Wages

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 37544
FILED: 04/25/2013

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 35A-4-208 defines wages and what is counted in determining eligibility for unemployment benefits. This rule reproduces some of that statute to.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule expands on the definitions found in the statute without changing those terms. The rule is necessary to assist Department employees and the public in knowing what wages are used for determining unemployment benefits and contributions. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Jon Pierpont, Executive Director

EFFECTIVE: 04/25/2013

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Alcoholic Beverage Control
Administration
No. 37365 (AMD): R81-2-12. Store Site Selection
Published: 03/15/2013
Effective: 04/30/2013

No. 37367 (AMD): R81-4A-2. Application
Published: 03/15/2013
Effective: 04/30/2013

No. 37368 (AMD): R81-4B-2. Application
Published: 03/15/2013
Effective: 04/30/2013

No. 37369 (AMD): R81-4C-2. Application
Published: 03/15/2013
Effective: 04/30/2013

No. 37370 (AMD): R81-4D-2. Application
Published: 03/15/2013
Effective: 04/30/2013

No. 37371 (AMD): R81-4E-2. Application
Published: 03/15/2013
Effective: 04/30/2013

No. 37372 (AMD): R81-4F-2. Application
Published: 03/15/2013
Effective: 04/30/2013

No. 37373 (AMD): R81-5-2. Application
Published: 03/15/2013
Effective: 04/30/2013

No. 37377 (AMD): R81-9-1. Application
Published: 03/15/2013
Effective: 04/30/2013

No. 37374 (AMD): R81-10A-3. Application
Published: 03/15/2013
Effective: 04/30/2013

No. 37375 (AMD): R81-10C-2. Application
Published: 03/15/2013
Effective: 04/30/2013

No. 37376 (AMD): R81-10D-2. Application
Published: 03/15/2013
Effective: 04/30/2013

No. 37378 (AMD): R81-11-1. Application
Published: 03/15/2013
Effective: 04/30/2013

Commerce
Occupational and Professional Licensing
No. 37364 (AMD): R156-55a. Utah Construction Trades Licensing Act Rule
Published: 03/15/2013
Effective: 04/22/2013

Crime Victim Reparations
Administration
No. 37380 (AMD): R270-1. Award and Reparation Standards
Published: 03/15/2013
Effective: 04/22/2013

Education
Administration
No. 37355 (AMD): R277-101. Utah State Board of Education Procedures
Published: 03/15/2013
Effective: 04/22/2013

No. 37356 (NEW): R277-113. LEA Fiscal Policies and Accountability
Published: 03/15/2013
Effective: 04/22/2013

Environmental Quality
Air Quality
No. 36738 (AMD): R307-343. Ozone Nonattainment and Maintenance Areas: Emissions Standards for Wood Furniture Manufacturing Operations
Published: 10/01/2012
Effective: 05/01/2013

No. 36738 (First CPR): R307-343. Ozone Nonattainment and Maintenance Areas: Emissions Standards for Wood Furniture Manufacturing Operations
Published: 01/01/2013
Effective: 05/01/2013

No. 36738 (Second CPR): R307-343. Emissions Standards for Wood Furniture Manufacturing Operations
Published: 04/01/2013
Effective: 05/01/2013

No. 36735 (NEW): R307-353. Plastic Part Coatings
Published: 10/01/2012
Effective: 05/01/2013

No. 36735 (First CPR): R307-353. Plastic Parts Coatings
Published: 01/01/2013
Effective: 05/01/2013

No. 36735 (Second CPR): R307-353. Plastic Parts Coatings
Published: 04/01/2013
Effective: 05/01/2013

Solid and Hazardous Waste
No. 37305 (AMD): R315-1. Utah Hazardous Waste Definitions and References
Published: 03/01/2013
Effective: 04/25/2013

No. 37306 (AMD): R315-2. General Requirements - Identification and Listing of Hazardous Waste
Published: 03/01/2013
Effective: 04/25/2013

No. 37307 (AMD): R315-3. Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities
Published: 03/01/2013
Effective: 04/25/2013

No. 37308 (AMD): R315-4. Procedures for Decisionmaking
Published: 03/01/2013
Effective: 04/25/2013

No. 37309 (AMD): R315-5. Hazardous Waste Generator Requirements
Published: 03/01/2013
Effective: 04/25/2013

No. 37310 (AMD): R315-6. Hazardous Waste Transporter Requirements
Published: 03/01/2013
Effective: 04/25/2013

No. 37311 (AMD): R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities
Published: 03/01/2013
Effective: 04/25/2013

No. 37312 (AMD): R315-8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
Published: 03/01/2013
Effective: 04/25/2013

No. 37313 (AMD): R315-9. Emergency Controls
Published: 03/01/2013
Effective: 04/25/2013

No. 37314 (AMD): R315-12. Administrative Procedures
Published: 03/01/2013
Effective: 04/25/2013

No. 37315 (AMD): R315-13. Land Disposal Restrictions
Published: 03/01/2013
Effective: 04/25/2013

No. 37317 (AMD): R315-16. Standards for Universal Waste Management
Published: 03/01/2013
Effective: 04/25/2013

No. 37318 (AMD): R315-17. End of Life Automotive Mercury Switch Removal Standards
Published: 03/01/2013
Effective: 04/25/2013

No. 37319 (AMD): R315-50-6. Representative Sampling Methods
Published: 03/01/2013
Effective: 04/25/2013

No. 37320 (AMD): R315-101. Cleanup Action and Risk-Based Closure Standards
Published: 03/01/2013
Effective: 04/25/2013

No. 37321 (AMD): R315-102. Penalty Policy
Published: 03/01/2013
Effective: 04/25/2013

No. 37322 (AMD): R315-301. Solid Waste Authority, Definitions, and General Requirements
Published: 03/01/2013
Effective: 04/25/2013

No. 37323 (AMD): R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements
Published: 03/01/2013
Effective: 04/25/2013

No. 37324 (AMD): R315-303. Landfilling Standards
Published: 03/01/2013
Effective: 04/25/2013

No. 37325 (AMD): R315-304. Industrial Solid Waste Landfill Requirements
Published: 03/01/2013
Effective: 04/25/2013

No. 37326 (AMD): R315-305. Class IV and VI Landfill Requirements
Published: 03/01/2013
Effective: 04/25/2013

No. 37327 (AMD): R315-306. Incinerator Standards
Published: 03/01/2013
Effective: 04/25/2013

No. 37328 (AMD): R315-307-3. Standards for Maintenance and Operation
Published: 03/01/2013
Effective: 04/25/2013

No. 37329 (AMD): R315-308. Ground Water Monitoring Requirements
Published: 03/01/2013
Effective: 04/25/2013

No. 37330 (AMD): R315-309. Financial Assurance
Published: 03/01/2013
Effective: 04/25/2013

No. 37331 (AMD): R315-310. Permit Requirements for Solid Waste Facilities
Published: 03/01/2013
Effective: 04/25/2013

No. 37332 (AMD): R315-311. Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities
Published: 03/01/2013
Effective: 04/25/2013

No. 37333 (AMD): R315-312. Recycling and Composting Facility Standards
Published: 03/01/2013
Effective: 04/25/2013

No. 37334 (AMD): R315-313-2. Transfer Station Standards
Published: 03/01/2013
Effective: 04/25/2013

No. 37335 (AMD): R315-314. Facility Standards for Piles Used for Storage and Treatment
Published: 03/01/2013
Effective: 04/25/2013

No. 37336 (AMD): R315-315. Special Waste Requirements
Published: 03/01/2013
Effective: 04/25/2013

No. 37337 (AMD): R315-316. Infectious Waste Requirements
Published: 03/01/2013
Effective: 04/25/2013

No. 37338 (AMD): R315-317. Other Processes, Variances, Violations, and Petition for Rule Change
Published: 03/01/2013
Effective: 04/25/2013

No. 37339 (AMD): R315-318. Permit by Rule
Published: 03/01/2013
Effective: 04/25/2013

No. 37340 (AMD): R315-320. Waste Tire Transporter and Recycler Requirements
Published: 03/01/2013
Effective: 04/25/2013

Governor
Economic Development
No. 37204 (REP): R357-2. Rural Broadband Service Fund
Published: 02/01/2013
Effective: 05/01/2013

No. 37208 (AMD): R357-6. Technology and Life Science Economic Development and Related Tax Credits
Published: 02/15/2013
Effective: 05/01/2013

No. 37207 (AMD): R357-9. Alternative Energy Development Tax Incentives
Published: 02/15/2013
Effective: 05/01/2013

Health
Health Care Financing, Coverage and Reimbursement Policy
No. 37301 (AMD): R414-303. Coverage Groups
Published: 03/01/2013
Effective: 04/17/2013

Family Health and Preparedness, Licensing
No. 37209 (AMD): R432-3.General Health Care Facility Rules Inspection and Enforcement
Published: 02/15/2013
Effective: 04/24/2013

Human Services
Services for People with Disabilities
No. 37245 (AMD): R539-1-3. Definitions
Published: 02/15/2013
Effective: 04/18/2013

Natural Resources
Wildlife Resources
No. 37225 (AMD): R657-12. Hunting and Fishing Accommodations for People with Disabilities
Published: 02/15/2013
Effective: 04/23/2013

No. 37233 (AMD): R657-20. Falconry
Published: 02/15/2013
Effective: 04/23/2013

End of the Notices of Rule Effective Dates Section

RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2013 through May 01, 2013. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: Due to space constraints, neither Index is included in this Bulletin.

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division’s web site (http://www.rules.utah.gov/).