

UTAH STATE BULLETIN

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

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

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <https://rules.utah.gov/>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <https://rules.utah.gov/> for additional information.

Office of Administrative Rules, Salt Lake City 84114

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Semimonthly.

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NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between December 02, 2020, 12:00 a.m., and December 15, 2020, 11:59 p.m. are included in this, the January 01, 2021, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least February 01, 2021. 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 May 01, 2021, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

PROPOSED RULES are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R68-6	Filing No. 53237

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-6. Utah Nursery Act
3. Purpose of the new rule or reason for the change:
The rule catchline needs to be corrected to reference a rule rather than law. Additional changes are needed to make this rule more consistent with the Utah Rulewriting manual.
4. Summary of the new rule or change:
The catchline has been changed to reflect the "Utah Nursery Rule" rather than the "Utah Nursery Act." Additional changes have been made to make the rule text more compliant with the Utah Rulewriting manual.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings to the state budget because the changes just update and make corrections to the existing rule text but should not affect the administration of the nursery program.

B) Local governments:																												
There are no anticipated costs or savings to local governments because the changes just update and make corrections to the existing rule text but should not affect the administration of the nursery program.																												
C) Small businesses ("small business" means a business employing 1-49 persons):																												
There are no anticipated costs or savings to small businesses because the changes just update and make corrections to the existing rule text but should not affect the administration of the nursery program.																												
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):																												
There are no anticipated costs or savings to non-small businesses because the changes just update and make corrections to the existing rule text but should not affect the administration of the nursery program.																												
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):																												
There are no anticipated costs or savings to the other persons because the changes just update and make corrections to the existing rule text but should not affect the administration of the nursery program.																												
F) Compliance costs for affected persons:																												
The rule changes will not affect compliance costs because requirements and fees charged by the department will not change.																												
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)																												
Regulatory Impact Table																												
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2021</th> <th>FY2022</th> <th>FY2023</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Total Fiscal Cost</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2021	FY2022	FY2023	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0	Other Persons	\$0	\$0	\$0	Total Fiscal Cost	\$0	\$0	\$0
Fiscal Cost	FY2021	FY2022	FY2023																									
State Government	\$0	\$0	\$0																									
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Non-Small Businesses	\$0	\$0	\$0																									
Other Persons	\$0	\$0	\$0																									
Total Fiscal Cost	\$0	\$0	\$0																									

Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, R. Logan Wilde, has reviewed and approves the regulatory impact analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This rule change will not have any fiscal impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

R. Logan Wilde, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 4-15-104

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/01/2021

10. This rule change MAY become effective on: 02/08/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	R. Logan Wilde, Commissioner	Date:	12/04/2020
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R68. Agriculture and Food, Plant Industry.

R68-6. Utah Nursery ~~Act~~ Rule.

R68-6-1. Authority.

Promulgated under authority of Section 4-15-~~3~~104.

R68-6-2. Terms Defined.

~~All~~ Each term[s] used in these rules shall have the meaning set forth for ~~such~~ each item[s] in the Act.

R68-6-3. Labeling.

A. In order to identify nursery stock properly, whenever it is shipped, delivered, or transported to any purchaser, at least one label bearing the name, origin ~~{}~~state grown or propagated~~}~~, size, variety, and grade ~~{}~~where applicable~~}~~ shall be attached to each separate species or variety.

B. Whenever a grade or size designation is used or implied in labeling or in an advertisement referring to a kind of nursery stock for which grades or sizes have been established in these rules, the nursery stock so labeled or so advertised shall conform to the specifications of the particular grade or size ~~as stated herein~~. Advertisements of ~~such~~ stock offered for sale in containers shall state plant grade or size, irrespective of the size of the container.

C. Non-established container stock shall be ~~so~~ identified by a water~~-~~resistant tag on which the words "non-established container stock" are printed. The tags shall be not less than 2 x 4 inches in size with lettering of 24~~-~~point Gothic type. The minimum length of time the stock has been planted in the container or the date the stock was planted in the container ~~must~~ shall also be stated on the tag. The tag shall bear only the required labeling. It shall be the responsibility of the supplier of non-established container stock to adequately label ~~such~~ stock as provided herein.

D. ~~All~~ Each rose[s] shall be labeled by grade for individual plants, bundles, or single lots.

R68-6-4. Condition of Nursery Stock.

A. Any nursery stock which, in the judgment of the Commissioner or ~~his~~ an authorized agent[s], does not meet the following minimum indices of vitality shall be removed from sale.

1. Woody-stemmed deciduous stock, such as fruit and shade trees, rose bushes, and shrubs shall have moist tissue in the stem or stems and branches and shall have viable buds or unwilted growth sufficient to permit the nursery stock to live and grow in a form characteristic of the species when planted and given reasonable care, except that in the case of rose bushes each stem must show moist, green undamaged cambium in at least the first ~~8~~ eight inches above the graft. Any single stem on a rose bush not meeting this specification ~~shall~~ may not disqualify the entire plant~~;~~ ~~PROVIDED~~ provided~~;~~ that a bush may

NOTICES OF PROPOSED RULES

be pruned to comply with the specification if at least two stems meeting the specification remain and the grade designation is changed accordingly.

2. Hardy herbaceous biennials or perennials when in a wilted, rotted, or any other condition indicative of poor vitality ~~shall~~ may not be sold or offered for sale in Utah.

3. Any bare-rooted or prepackaged woody-stemmed nursery stock having in excess of two inches of etiolated or otherwise abnormal growth from individual buds ~~shall~~ may not be sold or offered for sale.

4. Balled and burlapped stock in a weakened condition as evidenced by dieback or dryness of earthball or foliage, or ~~such~~ stock having broken or loose earthballs ~~shall~~ may not be sold or offered for sale.

5. Stock offered for sale in containers. The container shall be sufficiently rigid to hold the ball shape, protecting the root mass during shipment.

a. Container stock offered for sale shall be healthy, vigorous, well rooted, and established in the container in which it is sold. The tops of the plants shall be of good quality and in a healthy growing condition. Sufficient new fibrous roots shall have developed so that the root mass will retain its shape and hold together when removed from the container. This shall be evidenced in each case by the earthball of such stock remaining reasonably intact upon removing it from the container.

b. Non-established container stock offered for sale shall be deciduous stick which shows good top quality and a vigorous healthy growing condition. The potting media shall be capable of sustaining satisfactory plant growth. Evergreen stock ~~shall~~ may not be offered for sale in containers unless it is well established in the container.

R68-6-5. Standards for Nursery Stock.

Nursery stock offered for sale in Utah shall meet the grade and size standards as published by the American Association of Nurseryman (AAN), in the ~~[PUBLICATION ENTITLED]~~ publication entitled: American Standards for Nursery Stock, ANSI Z60.1-1996 approved November 6, 1996 which is herein incorporated by reference ~~within this rule~~. Buyers and sellers of nursery stock shall refer to and use common terminology that is contained in and defined by this incorporated document, in order to facilitate transactions involving nursery stock in this state.

R68-6-6. Organizational Provisional Permit.

A. Special projects held by nonprofit educational, charitable, or service organizations may be exempt from payment of fees for nursery license provided the applicant provides an application ~~for such~~.

B. ~~All~~ funds received from sales of such plants shall be used for the benefit of the organization or for improvement or beautification projects within the local community.

C. Plant materials distributed at these special projects shall meet the standards as described in Section R68-6-4 and R68-6-5.

D. No special project will be in direct competition with any licensed nursery.

E. A permit will be issued for ~~an~~ annual activity only. No fee is required, but the application must be completed and approved by the department before the project begins.

KEY: nurseries (agricultural)

Date of Enactment or Last Substantive Amendment: ~~September 15, 2004~~ 2021

Notice of Continuation: July 29, 2015

Authorizing, and Implemented or Interpreted Law: 4-15-~~3~~ 104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R68-30	Filing No. 53241

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:
R68-30. Independent Cannabis Testing Laboratory
3. Purpose of the new rule or reason for the change:
The changes are needed to adjust the license term for independent cannabis testing laboratories.
4. Summary of the new rule or change:
This rule is changed to adjust the term of a holder of an independent cannabis testing laboratory license so that licenses expire 12 months from issuance.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget because the fees charged by the Department of Agriculture and Food (Department) and administrative costs have not changed.
B) Local governments:
There is no anticipated costs or savings to local governments because they do not act as laboratories or regulate laboratories.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses because the fees charged by the Department and administrative costs have not changed.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses because the fees charged by the Department and administrative costs have not changed.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to other persons because the fees charged by the Department and administrative costs have not changed.

F) Compliance costs for affected persons:

Compliance costs for affected persons will not change because the fees charged by the Department will not change.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, R. Logan Wilde, has reviewed and approves the regulatory impact analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This rule change will not have a fiscal impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

R. Logan Wilde, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 4-41a-103(5)	Subsection 4-41a-405(2)(b)(iv)	Subsection 4-2-103(1)(i)
Subsection 4-41a-302(3)(b)(ii)	Subsection 4-41a-701(3)	Subsection 4-41a-801(1)
Subsection 4-41a-403(3)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/01/2021

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Agency Authorization Information

Agency head or designee, and title:	R. Logan Wilde, Commissioner	Date:	12/09/2020
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R68. Agriculture and Food, Plant Industry.

R68-30. Independent Cannabis Testing Laboratory.

R68-30-1. Authority and Purpose.

1) Pursuant to sections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications, and requirements to obtain and maintain an independent cannabis testing laboratory license.

R68-30-2. Definitions.

- 1) "Applicant" means any person or business entity who applies for a cannabis processing facility license.
- 2) "Batch" means a quantity of:
 - a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which lots of cannabis are used;
 - b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used; or
 - c) cannabis flower packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.
- 3) "Cannabis" means any part of a marijuana plant.
- 4) "Cannabis cultivation facility" means a person that:
 - a) possesses cannabis;
 - b) grows or intends to grow cannabis; and
 - c) sells or intends to sell cannabis to a cannabis cultivation facility or to a cannabis processing facility.
- 5) "Cannabis processing facility" means a person that:
 - a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under title 4 chapter 41, Hemp and Cannabidiol Act;
 - b) possesses cannabis with the intent to manufacture a cannabis product;
 - c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis extract; and
 - d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.
- 6) "Cannabis production establishment agent registration card" means a registration card that the department issues that:
 - a) authorizes an individual to act as a cannabis production establishment agent; and
 - b) designates the type of cannabis production establishment for which an individual is authorized to act as an agent.
- 7) "Department" means the Utah Department of Agriculture and Food.
- 8) "Independent cannabis testing laboratory" means a person who:

- a) conducts a chemical or other analysis of cannabis or a cannabis product; or
- b) acquires, possesses, and transports cannabis or a cannabis product with the intent to conduct a chemical or other analysis of the cannabis or cannabis product.
- 9) "Independent cannabis testing laboratory agent" means an individual who:
 - a) is an employee of an independent cannabis testing laboratory; and
 - b) holds a valid cannabis production establishment agent registration card.
- 10) "Lot" means the quantity of:
 - a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or
 - b) trim, leaves or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

R68-30-3. Independent Testing Laboratory License.

- 1) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis cultivation facility to conduct testing as required by section 4-41a-701(2) and Utah Admin. Code R68-29.
- 2) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis processing facility to conduct testing as required by section 4-41a-701(2) and Utah Admin. Code R68-29.
- 3) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis cultivation facility and a cannabis processing facility to conduct the additional test as requested.
- 4) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.
- 5) Prior to approving an application, the department may contact any applicant and request additional supporting documentation or information.
- 6) Prior to issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.
- 7) The department may conduct face-to-face interviews with an applicant if needed to determine the best-qualified applicant for the number of licenses needed.
- 8) The license shall expire twelve months from the date on which the license is issued~~[on December 31st of each year]~~.
- 9) An application for renewals shall be submitted to the department no later than 30 days prior to the license expiration date~~[by December 1st of each year]~~.
- 10) If the renewal application is not submitted 30 days prior to the expiration date~~[by December 31st]~~ the licensee may not continue to operate.
- 11) A license may not be sold or transferred.

R68-30-4. Independent Cannabis Testing Laboratory Requirements.

- 1) An independent testing laboratory shall employ a scientific director responsible for:
 - a) ensuring that the laboratory achievement and maintenance of quality standards of practice; and

b) supervising laboratory staff.
 2) The scientific director for an independent laboratory shall have:

a) a doctorate in chemical or biological sciences from an accredited college or university and have at least 2 years of post-degree laboratory experience;

b) a master's degree in chemical or biological sciences from an accredited college or university and have at least 4 years of post-degree laboratory experience; or

c) a bachelor's degree in chemical or biological sciences from an accredited college or university and have a least 6 years of post-degree laboratory experience.

3) An independent cannabis testing laboratory shall follow validated analytical methods, such as those published by AOAC, American Herbal Pharmacopoeia, EPA, FDA, or other reputable scientific organizations or notify the department of alternative scientifically valid testing methodology the lab is following for each required test.

4) An independent cannabis testing laboratory may not use an alternative testing method without prior review from the department.

5) The department shall review any monograph or analytical method followed by an independent cannabis testing laboratory to ensure the methodology produces scientifically accurate results prior to the use of alternative testing methods to conduct the required tests.

6) An independent cannabis testing laboratory shall establish written standard operating procedures for each test being conducted.

7) An independent cannabis testing laboratory shall obtain and keep the International Organization for Standardization (ISO) 17025:2017 accreditation.

8) An independent cannabis testing laboratory may be licensed prior to ISO 17025:2017 accreditation provided the independent cannabis testing laboratory:

a) adopt and follow minimum good laboratory practices which satisfy the OECD Principles of Good Laboratory Practice and Compliance Monitoring published by the Organization for Economic Co-operation and development; and

b) becomes ISO 17025:2017 accredited within 18 months.

9) The department incorporates the following materials by reference:

a) Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control (2014 Revisions) published by the American Herbal Pharmacopoeia; and

b) OECD Principles of Good Laboratory Practice and Compliance Monitoring (1997) published by the Organization for Economic Co-operation and Development.

10) An independent cannabis testing laboratory shall have written emergency procedures to be followed in case of:

a) fire;

b) chemical spill; or

c) other emergencies at the laboratory.

11) An independent cannabis testing laboratory shall compartmentalize all areas in the facility based on function and shall limit access to the compartments to the appropriate authorized agents.

R68-30-5. Security Requirements.

1) At a minimum, a licensed independent cannabis testing laboratory shall have a security alarm system on all perimeter entry points and perimeter windows.

2) At a minimum, a licensed independent cannabis testing laboratory shall have complete video surveillance system:

a) with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog, and

b) that retains footage for at least 45 days;

3) All cameras shall:

a) be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas; and

b) record continuously.

4) Controlled areas included:

a) all entrances and exits;

b) all areas where cannabis or cannabis products are stored,

c) all areas where cannabis or cannabis products are being tested, and

d) all areas where cannabis waste is being moved, processed, stored or destroyed.

5) If an independent cannabis testing facility stores footage locally, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

6) If an independent cannabis testing laboratory stores footage on a remote server, access shall be restricted to protect from employee tampering.

7) Any entry point must be lighted in low-light conditions sufficient to record activity occurring.

8) All visitors to an independent cannabis testing laboratory shall be required to have a properly displayed identification badge issued by the facility at all times while on the premises of the facility.

9) All visitors shall be escorted by an independent cannabis facility agent at all times while in the facility.

10) An independent cannabis testing laboratory shall keep and maintain a visitor's log showing:

a) the full name of each visitor entering the facility;

b) the badge number issued;

c) the time of arrival;

d) the time of departure, and

e) the purpose of the visit.

11) The independent cannabis testing laboratory shall keep the visitors log for a minimum of a year.

12) The independent cannabis testing laboratory shall make the visitor log available to the department upon request.

R68-30-6. Inventory Control.

1) Each test sample shall have a unique identification number in the inventory control system.

2) Each test sample shall be traceable to the lot or batch used as the base material from the cannabis production establishment.

3) Unique identification numbers may not be reused.

4) Each test sample that has been issued a unique identification number shall have a physical tag placed on it with:

a) the unique identification number;

b) the license number and name of the lab receiving the test sample;

c) the license number and name of the cannabis production establishment name;

d) the date the test sample was collected; and

e) the weight of the sample.

5) The tag shall be legible and placed in a position that can be clearly read and shall be kept free from dirt and debris.

6) The following shall be reconciled in the inventory control system at the close of business each day:

a) the date and time the test sample was received;

b) all samples used for testing and the test results;

c) the identity of the agent conducting the test;

c) a complete inventory of cannabis test samples;

d) the weight and disposal of cannabis waste materials;

NOTICES OF PROPOSED RULES

- e) the identity of who disposed of the cannabis waste; and
- f) the theft or loss or suspected theft or loss of test sample.

7) An independent cannabis testing laboratory shall document in the inventory tracking system any test samples received, and any difference between the quantity specified in the transport and quantities received.

R68-30-7. Independent Cannabis Testing Laboratory Agents.

1) An independent cannabis testing laboratory shall apply to the department for a cannabis establishment agent on a form provided by the department.

2) An application is not considered complete until the background check has been completed and the independent cannabis testing laboratory has paid the registration fee.

3) The cannabis establishment agent registration card shall contain:

- a) the agent's full name;
 - b) the name of the cannabis processing establishment; and
 - c) a photograph of the agent.
- 4) An independent cannabis testing laboratory is responsible to ensure that all agents have received:

a) the department approved training as specified in Utah Code 4-41a-301; and

b) any task-specific training as outlined in the operating plan submitted to the department.

5) An independent cannabis testing agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.

6) All cannabis production establishment agents shall have their state-issued identification card in their possession to certify the information on their badge is correct.

7) An agent's identification badge shall be returned to the department immediately upon termination of their employment with the independent cannabis testing laboratory.

R68-30-8. Transportation.

1) A printed transport manifest shall accompany every transport of cannabis.

2) The manifest shall contain the following information:

a) the cannabis production establishment address and license number of the departure location;

b) physical address and license number of the receiving location;

c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;

d) date and time of departure;

e) estimated date and time of arrival; and

f) name and signature of each agent accompanying the cannabis.

3) The transport manifest may not be voided or changed after departing from the original cannabis production establishment.

4) A copy of the transport manifest shall be given to the independent laboratory.

5) The receiving independent laboratory shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.

6) The receiving independent laboratory shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.

7) During transport an independent cannabis testing laboratory agent shall ensure the cannabis is:

a) shielded from the public view;

b) secured; and

c) temperature controlled if perishable.

8) An independent cannabis testing laboratory shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.

9) Only the registered agents of the independent cannabis testing laboratory may occupy a transporting vehicle.

R68-30-9. Cannabis Waste Disposal.

1) Solid and liquid wastes generated during cannabis testing shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.

2) Waste water generated during cannabis testing shall be disposed of in compliance with applicable state laws and regulations.

3) Cannabis waste generated from the cannabis plant, trim, and leaves are not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.

4) All cannabis waste shall be rendered unusable prior to leaving the independent cannabis testing laboratory.

5) Cannabis waste, which is not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume or other methods approved by the department before implementation.

6) Materials used to grind and incorporate with cannabis fall into two categories:

a) compostable; or

b) non-compostable.

7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:

a) food waste;

b) yard waste; or

c) vegetable-based grease or oils.

8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:

a) paper waste;

b) cardboard waste;

c) plastic waste; or

d) soil.

9) Cannabis waste includes:

a) cannabis plant waste including roots, stalks, leaves, and stems;

b) excess cannabis or cannabis products from any quality assurance testing;

c) cannabis or cannabis products that fail to meet testing requirements; and

d) cannabis or cannabis products subject to a recall.

R68-28-10. Change in Operation Plans.

1) An independent cannabis testing laboratory shall submit a notice, on a form provided by the department, prior to making any changes to:

a) ownership or financial backing of the facility;

b) the facility's name;

c) a change in location;

d) change in testing methods, equipment, remodeling, expansion, reduction or physical, non-cosmetic alteration of the lab; or

e) change in written operating procedures.

- 2) An independent cannabis testing laboratory may not implement changes to the approved operation plan without department approval.
- 3) The department shall respond to the request for changes within 15 business days.
- 4) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.
- 5) The department shall specify the reason for the denial of approval for a change to the operation plan.

R68-30-11. Renewals.

- 1) An independent cannabis testing laboratory shall submit a notice of intent to renew and the licensing fee to the department by their license expiration date~~[by December 31st of each year]~~.
- 2) If the licensing fee and intent to renew are not submitted on or before the expiration date~~[on or before December 31st]~~, the licensee may not continue to operate.
- 3) The department shall renew a license unless renewal would lead to a violation of the applicable laws and rules of the state.

R68-30-12. Proficiency Testing.

- 1) The department shall establish a proficiency testing program for independent cannabis testing laboratories.
- 2) Each independent cannabis testing laboratory shall participate in the designated proficiency testing program with satisfactory performance as determined by the Department.

R68-30-13. Violation Categories.

- 1) Public Safety Violations: \$3,000- \$5,000 per violation. This category is for violations which present a direct threat to public health or safety including, but not limited to:
 - a) cannabis sold to an unlicensed source;
 - b) cannabis purchased from an unlicensed source;
 - c) refusal to allow inspection;
 - d) refusal to participate in proficiency testing;
 - e) failure to comply with testing requirements;
 - f) failure to report testing results;
 - g) unauthorized personnel on the premises;
 - h) permitting criminal conduct on the premises;
 - i) engaging in or permitting a violation of the Utah Code 4-41a which amounts to a public safety violation as described in this subsection.
- 2) Regulatory Violations: \$1,000-\$5,000 per violation. This category is for violations involving this rule and other applicable state rules including, but not limited to:
 - a) failure to maintain alarm and security systems;
 - b) failure to keep and maintain records;
 - c) failure to maintain traceability;
 - d) failure to follow transportation requirements;
 - e) failure to follow the waste and disposal requirements; or
 - f) engaging in or permitting a violation of Utah Code 4-41a or this rule which amounts to a regulatory violation as described in this subsection.
- 3) Licensing Violations: \$500- \$5,000 per violation. This category is for violations involving licensing requirements including, but not limited to:
 - a) an unauthorized change to the operating plan;
 - b) failure to notify the department of changes to the operating plan;
 - c) failure to notify the department of changes to financial or voting interests of greater than 2%;

- d) failure to follow the operating plan as approved by the department;
- e) engaging in or permitting a violation of this rule or Utah Code 4-41a which amounts to a licensing violation as described in this subsection; or
- f) failure to respond to violations.
- 4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

KEY: cannabis laboratory, cannabis testing

Date of Enactment or Last Substantive Amendment: ~~[August 29, 2019]~~**2021**

Authorizing, and Implemented or Interpreted Law: 4-41a-701(3); 4-41a-404(3); 4-41a-405(2)(b)(iv); 4-41a-103(5)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-116	Filing No. 53246

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-116. Audit Procedure
3. Purpose of the new rule or reason for the change:
This rule is being updated to specify how the committee would review a request for an extension by a local education agency (LEA) and updating specific language regarding the Chief Audit Executive.
4. Summary of the new rule or change:
These rule amendments include updates to language and citations throughout this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. This rule change clarifies procedures and roles and will not significantly change the Utah State Board of Education (Board) processes.

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This rule change clarifies procedures and roles and will not significantly change Board processes.

C) Small businesses ("small business" means a business employing 1-49 persons):

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. This rule change clarifies procedures and roles and will not significantly change Board processes.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule change clarifies procedures and roles and will not significantly change Board processes.

F) Compliance costs for affected persons:

There are no material compliance costs for affected persons. This rule change clarifies procedures and roles and will not significantly change Board processes.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there

are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The State Superintendent of Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education

agencies and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-501(1)(e)	Subsection 63I-5-201(4)
Subsection 53E-3-401(4)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/01/2021

10. This rule change MAY become effective on: 02/08/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/14/2020
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R277. Education, Administration.

R277-116. Audit Procedure.

R277-116-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 63I-5-201(4) which requires the Board to direct the establishment of an internal audit department for programs administered by the entities it governs;

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Boards duties and responsibilities under the Utah Constitution and state law;

(d) Subsection 53E-3-501(1)(e), which directs the Board to develop rules and minimum standards regarding school productivity and cost effectiveness measures, school budget formats, and financial, statistical, and student accounting requirements for the local school districts;

(e) Section 53E-3-602, which allows the Board to approve auditing standards for school boards;

(f) Section 53E-3-603, which makes the Board responsible for verifying audits of local school districts;

(g) Subsection 53F-2-204(2), which directs the Board to assess the progress and effectiveness of all programs funded under the State System of Public Education; and

(h) Subsection 53E-3-401(9), which gives the Board authority to audit the use of state funds by an education entity that receives state funds as a distribution from the Board.

(2) The purpose of this rule is to:

(a) outline the role of the Chief Audit [Director]Executive, Superintendent, and agency in the audit process; and

(b) outline the Board's procedures for audits of agencies.

R277-116-2. Definitions.

~~_____ (1) "Agency" means:~~

~~_____ (a) an entity governed by the Board;~~

~~_____ (b) an LEA; or~~

~~_____ (c) a sub recipient.]~~

~~([2]1) "Audit committee" means [a standing committee of members appointed by the Board in accordance with Board bylaws]the same as that term is defined in Subsection 63I-5-102(5).~~

~~_____ (3) "Audit Director" means the person who:~~

~~_____ (a) directs the audit program of the Board in accordance with Title 63I, Chapter 5, the Utah Internal Audit Act and Board policies;~~

~~_____ (b) is appointed by and reports to the audit committee; and~~

~~_____ (c) is independent of the agencies subject to Board audit.]~~

~~([4]2) "Audit plan" means a prioritized list of audits with associated resource requirements to be performed by the audit program that is reviewed, approved, and adopted at least annually by the Board.~~

~~([5]3) "Audit program" means a department that provides internal audit services for the Board that is directed by the Chief Audit [Director]Executive.~~

~~_____ (4) "Chief Audit Executive" means the person who:~~

~~_____ (a) directs the audit program of the Board in accordance with Title 63I, Chapter 5, the Utah Internal Audit Act and Board policies;~~

~~_____ (b) is appointed by and reports to the audit committee; and~~

~~_____ (c) is independent of the agencies subject to Board audit.~~

~~([6]5) "Draft audit report" means a draft audit report compiled by the Chief Audit [Director]Executive that is classified as protected under [Title 63G, Chapter 2, Part 3, Section 305, Protected records]Subsection 63G-2-305(10).~~

~~([7]6) "Education entity" means the same as that term is defined in Section 53E-3-401.~~

~~([8]7) "Final audit report" means a draft audit report that is approved by the audit committee and the Board as a final audit report~~

NOTICES OF PROPOSED RULES

that is classified as public under [Title 63G, Chapter 2, Part 3, Section 301, Public records]Subsection 63G-2-301(3)(q).

(9)8) "Local administrator" means the district superintendent or charter school director.

(10)9) "Sub-recipient" means any entity that receives funds from an entity governed by the Board.

R277-116-3. Chief Audit [Director]Executive Authority and Responsibilities.

(1) The Chief Audit [Director]Executive shall:
(a) manage the audit program and facilitate the audit process:

(i) as approved and directed by the Board and audit committee;

(ii) in accordance with the current International Standards for the Professional Practice of Internal Auditing; and

(iii) in accordance with the USBE Internal Audit Department Policy and Procedure Manual.

(b) act as the liaison for external audits of the Board;

(c) maintain the classification of any public record consistent with GRAMA;

(d) be subject to the same penalties under GRAMA as the custodian of a public record;

(e) publish final reports on the Internal Audit department web[page]site if appropriate; and

(f) make a copy of the USBE Internal Audit Department Policy and Procedure Manual to the general public upon request.

(2) The Chief Audit [Director]Executive may contract with an LEA or other education entity to provide internal audit services to the LEA or other education entity if the contract is approved by the audit committee in accordance with Board contract policies.

R277-116-4. Superintendent Authority and Responsibilities.

The Superintendent shall:

(1) provide resources necessary to conduct the audit program including adequate funds, staff, tools, and space to support the audit program;

(2) facilitate communications with those charged with governance, management, and staff as requested by the Chief Audit [Director]Executive or the audit committee to ensure the access necessary to perform an audit;

(3) ensure access to all personnel, records, data, and other agency information that the Chief Audit [Director]Executive or staff consider necessary to carry out their assigned duties;

(4) notify the Chief Audit [Director]Executive of external audits of entities governed by the Board;

(5) notify the agency that the Chief Audit [Director]Executive shall be the liaison for an external audit;

(6) support the audit program as otherwise requested by the audit committee or Chief Audit [Director]Executive; and

(7) facilitate appropriate action by the Board on issues identified in audits by:

(a) sending the final management response letter and form to the governing board and local administrator of an audited agency in response to the final audit report;

(b) following up on final management response forms sent to the governing board and local administrator of an audited agency in accordance with timelines outlined in the management response letter, as monitored by the Chief Audit [Director]Executive, to ensure either:

- (i) the audited agency took appropriate action;
- (ii) the audited agency's lack of action is acceptable; or

(iii) implementation of a corrective action plan in accordance with Rule R277-114; and

(c) sending the closure letter to the governing board and local administrator of an audited agency when the Board accepts the audited agency's management response.

R277-116-5. Agency Authority and Responsibilities.

The agency shall wholly cooperate and provide the Chief Audit [Director]Executive and the internal audit staff all:

(1) necessary access to those charged with governance, management, and staff; and

(2) personnel, records, data, and other agency information that the Chief Audit [Director]Executive or staff consider necessary to carry out [their]assigned duties in a timely manner.

R277-116-6. Audit Process.

(1) The Chief Audit [Director]Executive shall develop and recommend an audit plan to the Board and the audit committee based on the results of periodic risk assessments and audits.

(2) Once approved and adopted by the Board, the Chief Audit [Director]Executive shall implement the audit plan.

(3) At the initiation of an audit, the Chief Audit [Director]Executive shall, as necessary:

(a) send an engagement letter to the governing board and local administrator of the agency subject to the audit; and

(b) hold an entrance conference with the agency's governing board.

(4) After conducting an audit, the Chief Audit [Director]Executive shall:

(a) submit a preliminary draft audit report directly to:

- (i) the audit committee; and
- (ii) the Superintendent;[and]

[_____ (iii) the governing board of the audited agency;]

(b) after complying with Subsection (4)(a), submit a preliminary draft audit report to the audited agency's governing board leadership, audit committee, and school administrators, as appropriate, and hold an exit conference, if necessary, [with the governing board and local administrator of the audited agency and administration] to discuss the preliminary draft audit report; and

(c) edit the preliminary draft audit report, as appropriate, based on feedback received.

(5) The Chief Audit [Director]Executive shall submit a revised draft audit report directly to:

- (a) the audit committee;
- (b) the Board;
- (c) the governing board and local administrator of the audited agency; and

(d) the Superintendent.

(6) Within fourteen days of the [Audit Director's]Chief Audit Executive's submission of the revised draft audit report to the audited agency governing board, and after the exit conference, if applicable, the [auditing]audited agency's governing board shall:

(a) provide a written response or comment on the draft audit report to the Chief Audit [Director]Executive and audit committee; or

(b) file a written request for an extension [to the audit committee]with the Chief Audit Executive setting forth:

- (i) the justification for the extension request; and
- (ii) the extension time necessary to provide the response;

(7) If a request for an extension is filed in accordance with Subsection (6)(b), the Chief Audit Executive shall respond after consulting with the Audit Committee Chair.

~~[(7)]~~(8) Upon receiving written response and comment from the audited agency governing board, the Chief Audit [Director]Executive shall:

(a) incorporate ~~[into the draft audit report]~~ the written response, if any, received from the audited agency governing board into the draft audit report;

(b) prepare Auditor concluding remarks, if appropriate; and

(c) submit the ~~[amended]~~revised draft audit report to the audit committee for recommendation to the Board.

~~[(8)]~~(9) The audit committee may:

(a) recommend an amended draft audit report for approval and adoption; or

(b) send the amended draft audit report back to the Chief Audit [Director]Executive with instructions for additional review.

~~[(9)]~~(10) Upon recommendation from the audit committee on the amended draft audit report, the Board may:

(a) approve and adopt an amended draft audit report as the final audit report; or

(b) send the amended draft audit report back to the audit committee with instructions for additional review.

R277-116-7. Audit Reports.

(1) An audit report prepared by the Chief Audit [Director]Executive and staff shall be based upon audits of agency programs, activities, and functions.

(2) An audit report prepared by the Chief Audit [Director]Executive shall include identification of any information required by Subsection 631-5-401(1)(l) related to the scope and objectives of the audit.;

- ~~_____ (a) abuse;~~
- ~~_____ (b) illegal acts;~~
- ~~_____ (c) errors;~~
- ~~_____ (d) omissions; or~~
- ~~_____ (e) conflicts of interest.~~

(3) The Chief Audit [Director]Executive shall provide, upon written request, a copy of ~~[an]~~ a final audit report to the Office of Legislative Auditor General or the Office of the State Auditor.

(4) The Chief Audit [Director]Executive shall ensure that public release of a final audit report complies with the conditions specified by the state laws and rules governing the audited agency.

KEY: educational administration

Date of Enactment or Last Substantive Amendment: ~~2021~~April 9, 2018

Notice of Continuation: September 15, 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-~~[4]3-401~~; 53E-3-501(1)(e); 53E-3-602; 53E-3-603; 53F-2-204; ~~631-5-101 through 401~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-550	Filing No. 53247

Agency Information

1. Department:	Education
Agency:	Administration

Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-550. Charter Schools - Definitions
3. Purpose of the new rule or reason for the change:
Utah State Board of Education (Board) Rule R277-550 is being amended to update the definition of satellite school to make clear that a satellite school must have the same authorizer as the original school.
4. Summary of the new rule or change:
This rule contains an updated definition for the term "satellite school."

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. This change updates this Board rule to align with existing regulatory intent, that a satellite charter school must have the same authorizer as the original charter school.
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This change updates this Board rule to align with existing regulatory intent, that a satellite charter school must have the same authorizer as the original charter school.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. This change updates this Board rule to align with existing regulatory intent, that a satellite charter school must have the same authorizer as the original charter school.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This change updates this Board rule to align with existing regulatory intent, that a satellite charter school must have the same authorizer as the original charter school.

F) Compliance costs for affected persons:

There are no material compliance costs for affected persons. This change updates this Board rule to align with existing regulatory intent, that a satellite charter school must have the same authorizer as the original charter school.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			

State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Title 53G, Chapter 5	Subsection 53E-3-401(4)
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an

association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/01/2021

10. This rule change MAY become effective on: 02/08/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/14/2020
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R277. Education, Administration.

R277-550. Charter Schools - Definitions.

R277-550-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Title 53G, Chapter 5, Charter Schools, which allows the Board to make rules governing aspects of operations of charter schools.
- (2) The purpose of this rule is to establish definitions for rules governing charter schools.
- (3) The definitions contained in this rule apply to Rules R277-550 through R277-555.

R277-550-2. Definitions.

- (1) "Amendment" means a change or addition to a charter agreement.
- (2) "Authorizer" means an entity approved to authorize the establishment of a charter school under Sections 53G-5-304 through 53G-5-306.
- (3) "Charter school" means a public school created in accordance with the provisions of Title 53G, Chapter 5, Charter Schools.
- (4)(a) "Charter school agreement" or "Charter agreement" means a written agreement between a charter school and its authorizer containing the terms and conditions for the operation of a charter school.
 - (b) The charter school agreement maintained by a charter school's authorizer is the final, official, and complete agreement.
- (5) "Charter school deficiency" means:
 - (a) failure of a charter school to comply with its charter agreement, including governance, financial, academic, or operational obligations;

- (b) failure of a charter school to comply with the requirements of state or federal law or board rule;
- (c) failure of a charter school to meet terms established by the school's authorizer as part of a remediation process; or
- (d) fraud or misuse of funds by charter school governing board members or employees.
- (6) "Charter school governing board" means the local board that governs a charter school.
- (7) "Expansion" means:
 - (a) an increase in the number of grade levels offered by a charter school identified by a single school number; or
 - (b) an increase in the number of students for which a charter school identified by a single school number is authorized to receive funding.
- (8) "Mentor" means an individual or organization with expertise or demonstrated competence, approved by the State Charter School Board to advise charter schools in the Mentoring Program.
- (9) "Mentoring program" means the State Charter School Board mentoring program.
- (10) "New school" means any school receiving a new school number, including a new charter school, or a new satellite school.
- (11) "Net lease adjusted debt burden ratio" means a school's cumulative annual debt service payments, inclusive of loans and facility lease payments, divided by the school's unrestricted annual operating revenue.
- (12) "Non-operating charter school" means a charter school that has not received minimum school program funds or federal funds and is not providing educational services during a fiscal year, such as a charter school in a start-up period.
- (13) "Operating charter school" means a charter school that has received minimum school program funds or federal funds and is providing educational services during a fiscal year.
- (14) "Probation" means a written formal action and notification through which a school is required to demonstrate the school's compliance with the authorizer's probationary requirements.
- (15) "Restricted revenue" means the same as the term is defined in Section 63J-1-102.
- (16) "Satellite school" means a charter school affiliated with an existing charter school physically located within the state of Utah that:
 - (a) has the same governing board as the existing charter school;
 - (b) has the same authorizer as the existing charter school;
 - (~~b~~c) may have a similar or different program of instruction or grades served from the existing charter school;
 - (~~e~~d) is located at a different site or in a different geographical area than the existing charter school; and
 - (~~f~~e) has a separate school number than the existing charter school.
- (17) "School number" means a number assigned by the Superintendent in accordance with National Center for Education Statistics criteria that identifies a distinct school within an LEA.
- (18) "State Charter School Board" means the board established in Section 53G-5-201.
- (19) "Unrestricted revenue" means revenue that is:
 - (a) not restricted revenue; or
 - (b) restricted revenue that may be used for purposes of paying for annual debt service payments, including loans and facility lease payments.
- (20) "Utah Consolidated Application" or "UCA" means the web-based grants management tool employed by the Superintendent

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through which LEAs submit plans and budgets for approval by the Superintendent or Board.

(21) "Utah eTranscript and Record Exchange" or "UTREx" has the same meaning as described in Subsection R277-484-2(11).

KEY: education, charter schools

Date of Enactment or Last Substantive Amendment: ~~2021~~ **August 12, 2020**

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53G-5-205

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-552	Filing No. 53248

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-552. Charter School Timelines and Approval Processes
3. Purpose of the new rule or reason for the change:
This rule was amended to clarify misperceptions regarding satellite schools and their authorizers.
4. Summary of the new rule or change:
Changes to this rule clarify that an authorizer must have an approved process for considering a request to transfer authorizers, as well as to clarify that a satellite school must have the same authorizer as the other schools in the satellite schools local education agencies (LEA).

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. This change updates the Utah State Board of Education (Board) rule to align with existing regulatory intent, that a satellite charter school must have the same authorizer as the original charter school.
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This change updates the Board rule to align with existing regulatory intent, that a satellite charter school must have the same authorizer as the original charter school.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. This change updates the Board rule to align with existing regulatory intent, that a satellite charter school must have the same authorizer as the original charter school.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This change updates the Board rule to align with existing regulatory intent, that a satellite charter school must have the same authorizer as the original charter school.

F) Compliance costs for affected persons:

There are no material compliance costs for affected persons. This change updates the Board rule to align with existing regulatory intent, that a satellite charter school must have the same authorizer as the original charter school.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The State Superintendent of Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses,

they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on LEAs and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Section 53F-2-702	Section 53G-5-306
Subsection 53E-3-401(4)	Section 53G-5-304	Section 53G-5-305
Subsection 53G-6-504(5)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/01/2021

10. This rule change MAY become effective on: 02/08/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/14/2020
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R277. Education, Administration.

R277-552. Charter School Timelines and Approval Processes.

R277-552-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities;
 - (c) Subsection 53G-6-504(5), which requires the Board to make rules regarding a charter school expansion or satellite campus;
 - (d) Sections 53G-5-304 through 53G-5-306, which require the Board to make a rule providing a timeline for the opening of a charter school;
 - (e) Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school;
 - (f) the Charter School Expansion Act of 1998, 20 U.S.C. Sec. 8063, which directs the Board to submit specific information prior to a charter school's receipt of federal funds; and
 - (g) Subsection 53G-5-205(5), which requires the Board to make rules establishing minimum standards that an authorizer is required to apply in authorizing and monitoring charter schools.
- (2) The purpose of this rule is to:
 - (a) establish procedures for timelines and approval processes for new charter schools; and
 - (b) provide criteria and standards for consideration of high performing charter schools to expand and request new schools that are satellite schools.

R277-552-2. Definitions.

"Market analysis" means a qualitative and quantitative analysis of the educational market near a proposed charter school, including:

- (1) the school's target demographics;
- (2) population and development trends in the area;
- (3) nearby competing public schools;
- (4) the proposed school's own forecasts, along with supporting data; and
- (5) any risks, barriers, or regulations that may impact a proposed school's success.

R277-552-3. Charter School Authorization Process.

- (1) An individual or non-profit organization as described in Subsection 53G-5-302(2)(b) may apply to open a charter school from any statutorily approved authorizer.
- (2) An authorizer shall submit a process to the Board for approval of:
 - (a) a new charter school;
 - (b) a request from a school to change authorizers;
 - (~~b~~)c) a charter school expansion; or
 - (~~e~~)d) a satellite school.
- (3) A new authorizer shall submit a new charter school application process to the Board for approval at least six months prior to accepting applications for a new charter school.
- (4) An existing authorizer may not authorize a new charter school for the 2021-22 school year and beyond until the Board approves the authorizer's application process.

(5)(a) The Board shall approve or deny an authorizer's proposed application process, including expansion and satellite approval processes, within 90 days of receipt of the proposed process from an authorizer.

(b) If the Board denies an application process, the Superintendent shall provide a written explanation of the reasons for the denial to the applicant within 45 days.

(c) If an authorizer's application process is denied, the authorizer may submit a revised application process for approval at any time.

(6) An authorizer shall have an application and charter agreement, which shall include all elements required by Title 53G, Chapter 5, Part 3, Charter School Authorization.

(7) An authorizer shall maintain the official signed charter agreement, which shall presumptively be the final, and complete agreement between a school and the school's authorizer.

(8) An authorizer's review process for a new charter school shall include:

- (a) a plan for mandatory pre-operational and other trainings;
- (b) an evaluation of the school's governing board, including:
 - (i) a review of the resumes of and background information of proposed governing board members; and
 - (ii) a capacity interview of the proposed governing board;
- (c) an evaluation of the school's financial viability, including:
 - (i) a market analysis;
 - (ii) anticipated enrollment; and
 - (iii) anticipated and break even budgets;
- (d) an evaluation of the school's academic program and academic standards by which the authorizer will hold the school accountable; and
- (e) an evaluation of the school's proposed pre-operational plan, including implementation of:
 - (i) applicable legal requirements for public schools;
 - (ii) required policies;
 - (iii) student data systems, including student data privacy requirements;
 - (iv) reporting; and
 - (v) financial management.

(9) An authorizer's review process shall include contacting the school district in which a proposed charter school will be located and consideration of any feedback provided by the district.

(10) An authorizer shall design its approval process so that the authorizer notifies the Superintendent of an authorizer approval of a request identified in Subsection (2) no later than October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

R277-552-4. Timelines - Charter School Starting Date and Facilities.

(1) A charter school may receive state start-up funds if the charter school is approved as a new charter school by October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

(2) Prior to receiving state start-up funds an authorizer, other than the State Charter School Board, shall certify in writing to the State Charter School Board that a charter school has:

- (a) completed all required financial documents;
- (b) completed background checks for each governing board member; and
- (c) executed a signed charter agreement, which includes academic goals.

(3) Prior to an LEA receiving state start-up funds, the State Charter School Board shall require the LEA to submit documentation supporting the information required in Subsections (2)(a) and (c) to the Superintendent.

(4) A charter school may receive state funds, including minimum school program funds, if the charter school authorizer certifies in writing to the Superintendent by June 30 prior to the school's first operational year that:

(a) the charter school meets the requirements of Subsection (2);

(b) the charter school's governing board has adopted all policies required by statute or Board rule, including a draft special education policies and procedures manual;

(c) the charter school's governing board has adopted an annual calendar in an open meeting and has submitted the calendar to the Superintendent;

(d) the authorizer has received the charter school's facility contract as required by Subsection 53G-5-404(9);

(e) the charter school has met the requirements of Subsections (5) and (6) and that the school's building is scheduled for completion, including all required inspections, prior to occupancy;

(f)(i) the charter school has hired an executive director and a business administrator; or

(ii)(A) the charter school governing board has designated an executive director or business administrator employed by a third party; and

(B) the charter school governing board has established policies regarding the charter school's supervision of the charter school's third-party contractors;

(g) the charter school's enrollment is on track to be sufficient to meet the school's financial obligations and implement the charter school agreement;

(h) the charter school has an approved student data system that has successfully communicated with UTREx, including meeting the compatibility requirements of Subsection R277-484-5(3);

(i) the charter school has a functional accounting system; and

(j) the charter school has a budgeted net lease adjusted debt burden ratio of under 30% based on the school's executed facility agreement; and

(k) the charter school has complied with all legal requirements for new charter schools in a school's pre-operational year.

(5) An authorizer shall:

(a) create a process to verify the requirements in Subsection (4);

(b) maintain documentation of Subsection (5)(a); and

(c) provide the documentation described in Subsection (5)(b) to the Superintendent upon request; and

(d) submit a copy of the process required in Subsection (5)(a) to the Board for approval along with the authorizer's process for approving new charters under Subsection R277-552-3(2).

(6) A charter school shall begin construction on a new or existing facility requiring major renovation, such as requiring a project number consistent with Rule R277-471, no later than January 1 of the year the charter school is scheduled to open.

(7) A charter school that intends to occupy a facility requiring only minimal renovation, such as renovation not requiring a project number according to Rule R277-471, shall enter into a written agreement no later than May 1 of the calendar year the charter school is scheduled to open.

(8) If a charter school fails to meet the requirements of this section within 36 months of approval, the approval of the charter school shall expire.

R277-552-5. Charter Amendment Requests.

(1) An authorizer shall have a policy establishing a process for consideration of proposed amendments to a school's charter agreement.

(2) An authorizer's timeline for consideration of an amendment to a charter agreement may not conflict with any funding deadline established in Board rule.

R277-552-6. Charter School Expansion Requests.

(1) An authorization process developed by an authorizer in accordance with Subsection R277-552-~~[3]~~2 shall comply with this Section R277-552-~~[6]~~[5] for a charter school expansion.

(2) An authorizer may only consider an application from a charter school for an expansion if:

(a) the charter school is in compliance with the requirements of federal and state law, regulations, and Board rule, including:

(i) Title 53E, Chapter 9, Student Privacy and Data Protection;

(ii) Title 53G, Chapter 7, Part 5, Student Fees;

(iii) Title 53G, Chapter 9, Part 7, Suicide Prevention;

(iv) Title 53G, Chapter 8, Discipline and Safety;

(v) Title 52, Chapter 4, Open and Public Meetings Act;

(vi) Title 63G, Chapter 6a, Utah Procurement Code; and

(vii) the IDEA and Rule R277-750, with no unresolved audit

exceptions;

(viii) Rule R277-113, Local Education Agency (LEA) Fiscal and Auditing Policies;

(ix) Section 53G-9-207, Child sexual abuse prevention; and

(x) Subsection 63G-7-301(3) and Rule R277-322;

(b) the request is consistent with the charter school's charter agreement;

(c) the expanding school or LEA is performing:

(i) consistent with or above the charter school's stated academic goals; and

(ii) at or above the average student performance of other nearby schools on statewide assessments, unless serving a specialized population consistent with the school's charter agreement;

(d) if the proposed expansion will require additional physical facilities, the charter school has maintained a net lease adjusted debt burden ratio of under 25% for each of the last three years;

(e) the charter school's financial statements report revenues in excess of expenditures for at least three of the last four fiscal years; and

(f) the charter school provides any additional information or documentation requested by the charter school authorizer.

(3) An authorizer shall provide documentation of an applicant school's eligibility to apply under Subsection (2) to the Superintendent upon request.

(4) An authorizer may only approve an application from a charter school for an expansion if:

(a) the charter school is meeting the terms of its charter agreement;

(b) the charter school is academically and operationally successful, taking into consideration at least two years of academic performance data of students at the charter school;

(c) the charter school:

(i) provides educational services consistent with state law and Board rule;

(ii) administers and has capacity to carry out statewide assessments including proctoring statewide assessments, consistent with Section 53E-4-303 and Rule R277-404; and

(iii) provides evidence-based instruction for special populations as required by federal law;

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(d) the charter school has adequate qualified administrators and staff to meet the needs of the proposed student population at the school;

(e) the school is in compliance with all applicable school legal obligations;

(f) the charter school has maintained for each of the last three years:

- (i) a re-enrollment rate of at least 80%;
- (ii) a wait list of at least 40% of its annual enrollment; or
- (iii) other evidence of market demand satisfactory to the authorizer;

(g) the charter school is financially viable, as evidenced by the charter school's financial records, including the charter school's:

- (i) most recent annual financial report (AFR);
- (ii) annual program report (APR); and
- (iii) audited financial statements;

~~(h)~~(g) the charter school's proposal provides an adequate facility for the school; and

~~(i)~~(h) the charter school has appropriately dealt with student safety issues, if any.

(5) An authorizer shall:

(a) approve a proposed expansion before October 1 of the state fiscal year prior to the school year that the intends to expand; and

(b) provide the total number of students by grade that the charter school expansion is authorized to enroll to the Superintendent on or before October 1 of the state fiscal year prior to the school year that the school intends to expand.

R277-552-7. Requests for a New Satellite School for an Approved Charter School.

(1) An authorization process developed by an authorizer in accordance with Subsection R277-552-3(2) shall comply with this Section R277-552-7 for a satellite school.

(2) An authorizer may only consider an application from a charter school for a satellite school if:

(a) the charter school is in compliance with the requirements of federal and state law, regulations, and Board rule, including:

- (i) Title 53E, Chapter 9, Student Privacy and Data Protection;
- (ii) Title 53G, Chapter 7, Part 5, Student Fees;
- (iii) Title 53G, Chapter 9, Part 7, Suicide Prevention;
- (iv) Title 53G, Chapter 8, Discipline and Safety;
- (v) Title 52, Chapter 4, Open and Public Meetings Act;
- (vi) Title 63G, Chapter 6a, Utah Procurement Code; and
- (vii) the IDEA and Rule R277-750, with no unresolved audit exceptions;

(viii) Rule R277-113, Local Education Agency (LEA) Fiscal and Auditing Policies;

- (ix) Section 53G-9-207, Child sexual abuse prevention; and
- (x) Subsection 63G-7-301(3) and Rule R277-322;

(b) the request is consistent with the charter school's charter agreement;

(c) all schools operating under the governance of the existing charter school are performing:

(i) consistent with or above the charter school's stated academic goals; or

(ii) if no student performance goals have been established, above the standardized student assessment measures of other comparable nearby schools;

(d) the charter school has maintained a net lease adjusted debt burden ratio of under 25% for each of the last three years;

(e) the charter school's financial statements report revenues in excess of expenditures for at least three of the last four years;

(f) the charter school provides a market analysis, including documentation of the school's potential for enrollment stability, covering all public schools within a ten mile radius, including analysis of whether nearby schools are at enrollment capacity; and

(g) the charter school provides any additional information or documentation requested by the charter school authorizer.

(3) An authorizer may not consider an application for a satellite school from a charter school governed by a different authorizer.

~~(3)~~4 An authorizer shall provide documentation of an applicant school's eligibility to apply under Subsection (2) to the Superintendent upon request.

~~(4)~~5 An authorizer may only approve an application from a charter school for a satellite school if:

(a) the charter school is meeting the terms of its charter agreement;

(b) the charter school has maintained for each of the last three years:

- (i) a re-enrollment rate of at least 80%;
- (ii) a wait list of at least 40% of its annual enrollment; or
- (iii) there is a demonstrated demand for the proposed satellite, taking into consideration the market analysis required under Subsection 2)(f);

(c) the charter school is academically and operationally successful, taking into consideration at least two years of academic performance data of students at the charter school, including whether the charter school is performing at or above:

(i) the academic goals established in the charter school's agreement; and

(ii) the average academic performance of other district and charter schools in the area or schools targeting similar populations or demographics;

(d) the charter school has plans for the new school to:

(i) provide educational services consistent with state law and Board rule;

(ii) administer and have capacity to carry out statewide assessments including proctoring statewide assessments, consistent with Section 53E-4-303 and Rule R277-404; and

(iii) provide evidence-based instruction for special populations as required by federal law;

(e) the charter school has adequate qualified administrators and staff to meet the needs of the proposed student population at the new school;

(f) the school is in compliance with all public school legal obligations;

(g) the charter school is in good standing with its authorizer; and

(h) the charter school is financially viable, as evidenced by the charter school's financial records, including the charter school's:

- (i) most recent annual financial report (AFR);
- (ii) annual program report (APR); and
- (iii) audited financial statements.

~~(5)~~6 An authorizer shall:

(a) approve a proposed satellite school before October 1 of the state fiscal year prior to the school year that the proposed school intends to first serve students;

(b) provide the total number of students by grade that the satellite school is authorized to enroll to the Superintendent on or before October 1 of the state fiscal year prior to the school year that the proposed school intends to first serve students; and

(c) ensure that a proposed school that will receive School LAND Trust funds has a charter trust land council and satisfies all

requirements of Rule R277-477, including transparency of information for parents.

([6]7) A charter school and all of the charter school's satellite schools are a single LEA for purposes of public school funding and reporting.

([7]8) If a satellite charter school does not open within 36 months of approval, the approval shall expire.

([8]9) If an authorizer denies an application for a satellite school, the school may immediately apply for a new charter in accordance with an authorizer's approved processes.

R277-552-8. Procedures and Timelines to Change Charter School Authorizers.

(1) A charter school may transfer to another charter school authorizer.

(2) A charter school shall submit an application to the new charter school authorizer at least 90 days prior to the proposed transfer.

(3) The charter school authorizer transfer application shall include:

(a) the name and contact information of all current governing board members;

(b) financial records that demonstrate the charter school's financial position, including the following:

(i) most recent annual financial report (AFR);

(ii) annual [project]program report (APR); and

(iii) audited financial statements;

(c) test scores, including all state required assessments;

(d) current employees and assignments;

(e) board minutes for the most recent 12 months; and

(f) affidavits, signed by all board members certifying:

(i) the charter school's compliance with all state and federal laws and regulations, including documentation if requested;

(ii) all information on the transfer application is complete and accurate;

(iii) the charter school is current with all required charter school governing board policies;

(iv) the charter school is operating consistent with the charter school's charter agreement; and

(v) there are no outstanding lawsuits, judgments, or liens against the charter school.

(4) The current authorizer of a charter school seeking to transfer charter school authorizers shall submit a position statement to the new charter school authorizer about:

(a) the charter school's status;

(b) compliance with the charter school authorizer requirements; and

(c) unresolved concerns.

(5) If a school applies to change authorizer's, the existing authorizer shall advise the proposed authorizer if there is any outstanding debt to the existing authorizer or the state.

(6) If a school applies to change authorizers, the request shall extend to all satellite schools.

([6]7) A new charter school authorizer shall review an application for transferring to another charter school authorizer within 60 days of submission of a complete application, including all required documentation.

([7]8) Prior to accepting a charter school's transfer from another authorizer, the new authorizer shall request and consider information from the Board and current authorizer concerning the charter school's financial and academic performance.

([8]9) The Superintendent and current authorizer shall provide the information described in Subsection (7) to a new charter authorizer within 30 days of request described in Subsection (7).

([9]10) If an authorizer accepts the transfer of a charter school, the new authorizer shall notify the Superintendent within 30 days.

KEY: training, timelines, expansion, satellite

Date of Enactment or Last Substantive Amendment: ~~2021~~October 23, 2020]

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53G-5-205; 53F-2-702; 53G-6-503

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-625	Filing No. 53253

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state:	Salt Lake City, UT 84111
Mailing address:	PO Box 144200
City, state, zip:	Salt Lake City, UT 84114-4200

Contact person(s):

Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:
R277-625. Mental Health Screening Program

3. Purpose of the new rule or reason for the change:
This rule is being amended in response to public comment received by the Disability Law Center regarding more specificity around the data sharing of a mental health screener's results for a student and how long that data can be kept by a local education agency (LEA) to prevent the data from following a student for an unreasonable amount of time. Also, feedback from the Division of Substance and Mental Health in regard to what is considered a "mental health screener" has resulted in subsequent definitions being added for "mental health," "mental health screener," and "mental health services."

4. Summary of the new rule or change:
 The amendments include a definition of "mental health screener" and "mental health services," it also clarifies a requirement that an LEA list all professional positions that will have access to a student's mental health screener data on the parental consent form.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The changes are primarily technical and clarifying in nature.

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The changes are primarily technical and clarifying in nature.

C) Small businesses ("small business" means a business employing 1-49 persons):

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The changes are primarily technical and clarifying in nature.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The changes are primarily technical and clarifying in nature.

F) Compliance costs for affected persons:

There are no significant compliance costs for affected persons. The changes are primarily technical and clarifying in nature.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses

are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on LEAs and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Section 53F-2-522	Subsection 53E-3-401(4)
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/01/2021

10. This rule change MAY become effective on: 02/08/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/14/2020
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R277. Education, Administration.

R277-625. Mental Health Screeners~~[ing Program]~~.

R277-625-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Section 53F-2-522 which directs the board to make rules regarding the selection of a mental health screener~~[ing programs]~~ and financial aid for qualifying parents.

(2) The purpose of this rule is to:

(a) provide the approval process for a mental health screener~~[ing programs]~~ chosen by an LEA; and

(b) establish the approval and distribution of funds for a qualifying parent to receive financial assistance for related mental health services.

R277-625-2. Definitions.

(1) "Division of Substance Abuse and Mental Health" or "DSAMH" means the same as the term is defined in Subsection 62A-15-103.

(2) "Mental health" means a person's emotional, psychological, and social well-being which can affect how a person thinks, feels, and acts including how a person handles stress, relates to others, and makes healthy choices.

(~~2~~3) "Mental health screen~~[ing]~~er" or "screener" means the use of a systematic tool or process [program" or "screening program" means the same as the term is defined in Subsection 53F-2-522(1)(e).];

(a) to identify if a student is experiencing, or is at risk of experiencing, issues related to the student's mental health;

(b) for an early identification strategy to detect the onset of mental health conditions, enabling the mental health conditions to be potentially addressed; and

(c) that is not:

(i) a diagnostic tool or process; or

(ii) a system or process used by a student's teacher to observe behavior for the purpose of targeted learning interventions.

(4) "Mental health services" means the same as the term is defined in Subsection R523-1-3(3).

(~~3~~5) "Qualifies for financial assistance" means a qualifying parent that has a student receiving educational services through an LEA who:

(a) receives free or reduced lunch; or

(b) as recommended by the local mental health authority, demonstrates need including being:

(i) uninsured;

(ii) underinsured;

(iii) ineligible for Medicaid to cover part or all of any recommended mental health treatments; or

(iv) demonstrates a high need for interventions based upon results of the LEA's mental health screener~~[ing program]~~.

(~~4~~6) "Qualifying parent" means the same as the term is defined in Subsection 53F-2-522(1)(d).

(~~5~~7) "Relevant services" means mental health services provided to a student that are directly related to mental health needs identified by a student's mental health screening.

R277-625-3. Approval of Mental Health Screener~~[ing Program]~~s.

(1)(a) The Superintendent, in consultation with DSAMH, shall publish annually a list of pre-approved mental health screener~~[ing program]~~s to the Board's website.

NOTICES OF PROPOSED RULES

- (b) the published pre-approved list shall include:
 - (i) the name or brand of the mental health screener[ing program] including a link to the screener[ing program]'s website;
 - (ii) the recommended ages for the mental health screener[ing program];
 - (iii) any limitations of the mental health screener[ing program] including the typical level of false positives;
 - (iv) the mental health conditions the mental health screener[ing program] can detect; and
 - (v) the scientific data or research used to verify a screener[ing program] is evidence-based.
- (2) The Board shall approve:
 - (a) the pre-approved mental health screener[ing program] list; and
 - (b) the mental health conditions for which a screener[ing program] can be used.
- (3) All pre-approved mental health screeners[ing programs] shall comply with the requirements as described in Title 53E, Chapter 9, Student Privacy and Data Protection, and the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.
- (4) Except as provided for in Subsection (4)(c) and (d), an LEA shall notify the Superintendent by May 1:
 - (a) if the LEA plans to:
 - (i) use a mental health screener[ing program] from the pre-approved list; or
 - (ii) apply to the Superintendent for approval of a mental health screener[ing program] that is not on the pre-approved list;
 - (b) whether an LEA elects to participate in providing a qualifying parent with financial assistance;
- (c) In accordance with Subsections (4)(a) and (b) and for the 2020-2021 school year, an LEA shall notify the Superintendent by August 15; and
- (d) An LEA is not required to comply with Subsection (4) if the LEA chooses not to offer a mental health screener[ing program].
- (5) If the LEA chooses to apply for use of a mental health screener[ing program] that is not on the pre-approved list, the LEA shall submit an application in a form prescribed by the Superintendent specifying:
 - (a) the mental health screener[ing program] proposed for use by the LEA;
 - (b) the reason for choosing the mental health screener over a screener from the pre-approved list[ing program];
 - (c) the approved mental health conditions the mental health screener[ing program] measures;
 - (d) how the mental health screener[ing program] complies with all state and federal data privacy laws; and
 - (e) the scientific data or research demonstrating the mental health screener[ing program] is evidence based and meets industry standards;
 - (f) why the mental health screener[ing program] is age appropriate for each grade the screener[ing program] is administered; and
 - (g) why the mental health screener[ing program] is an effective tool for identifying whether a student has a mental health condition that requires intervention.
- (6) The Superintendent shall review the application in consultation with DSAMH and approve or deny the application within 30 days of receipt.
- (7) If the application is approved, the Superintendent shall submit the approved application to the Board for final approval.

- (8) Subject to legislative appropriation, the Superintendent shall provide annually a maximum reimbursement amount an LEA may receive for use of a mental health screener[ing program].
- (9) An LEA may request in writing a reimbursement from the Superintendent in an amount not to exceed the amount described in Subsection (8).
- (10)(a) An LEA shall require relevant staff, who will be administering a mental health screener[ing program], to attend an annual mental health screener[ing program] training provided by the Superintendent in collaboration with DSAMH;
- (b) the training described in Subsection (10)(a) shall provide an LEA with information needed for appropriate parental consent including:
 - (i) consent shall be obtained:
 - (A) within [§]eight weeks prior to administration of the mental health screener[ing program]; and
 - (B) in accordance with Subsection 53E-9-203(4);
 - (ii) the consent form shall be provided separately from other consent forms given to a parent pursuant to other state or federal laws;
 - (iii) additional variables that might influence a screener[ing program]'s results; and
 - (iv) a statement that:
 - (A) the mental health screener is optional;
 - (B) a screener[ing program] is not a diagnostic tool;
 - (C) a parent has the right to seek outside resources or opinions; and
 - (D) specifies which board approved mental health conditions the mental health screener[ing program] measures.
- (11) An LEA may not administer a mental health screener[ing program] if the LEA has not attended the annual mental health screener[ing program] training described in Subsection (10).
- (12) An LEA shall report annually to the Superintendent aggregate data regarding the types of LEA provided mental health interventions, referrals, or other actions taken based on screener[ing program] results.

R277-625-4. Data Privacy.

- (1)(a) An LEA shall ensure all data collected or stored by a mental health screener[ing program] complies with all state and federal data privacy laws and requirements, including those described in Subsection R277-625-3(3).
- (b) notwithstanding Subsection (1)(a), an LEA shall provide a parent with a list of all parties that may receive any data related to a student's mental health screener prior to the parent providing consent.
- (2) An LEA shall provide a parent with a list of all data potentially collected by the mental health screener[ing program] prior to consenting to a student's mental health screening.
- (3) An LEA shall provide the parent of a screened student with:
 - (a) results as described in Subsection 53F-2-522(4)(d);
 - (b) applicable available resources; and
 - (c) who has access to the screener[ing program] data
- (4) If an LEA has received parental consent, an LEA may share data collected from the mental health screener[ing program] with a school's multi-disciplinary team.
- (5) An LEA shall retain and dispose of all data related to a student's mental health screener in accordance with an approved retention schedule not to exceed three years.

R277-625-5. Financial Assistance for a Qualifying Parent.

(1) An LEA that has elected to participate as described in Subsection R277-625-3(4)(b), may receive reimbursement for relevant services obtained by a qualifying parent [that qualifies for] who receives financial assistance.

(2) An LEA may not receive reimbursement for a qualifying parent if:

(a) the qualifying parent's student has begun to receive relevant services outside of the school setting prior to seeking reimbursement;

(b) the LEA can provide the relevant services, including relevant services provided by a third party through a contract with the LEA;

(c) except for as provided in Subsection (d), the qualifying parent has received reimbursement for the same relevant services within one year from the date the relevant services began for the student; or

(d) an LEA may provide reimbursement to a qualifying parent for the same relevant services within one year from the date relevant services began for the student if:

(i) the LEA has no other qualifying parents seeking reimbursement by April 1 and;

(ii) has reimbursement funds remaining.

(3) An LEA may not receive reimbursements that exceed the LEA's award amount as described in Subsection (4).

(4) An LEA that has elected to participate as described in Subsection R277-625-3(4)(b), shall receive a total award amount based on need as determined by the Superintendent.

(5) The Superintendent shall determine a participating LEA's need by considering the LEA's ability to support and provide mental health services for a student including:

(a) the availability of mental health services within the LEA;

(b) the availability of mental health services within the LEA's surrounding community;

(c) the overall accessibility of mental health services for students within the LEA;

(d) the current student demand for mental health services within an LEA; and

(e) capacity of the LEA to meet existing and future student demands for mental health services.

KEY: mental health screener[ing program], mental health, prevention

Date of Enactment or Last Substantive Amendment: 2021 [August 12, 2020]

Authorizing, and Implemented or Interpreted Law: [Art X Sec 3; 53E-3-401(4); 53F-2-522

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R277-627	Filing No. 53254

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education

Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-627. Early Warning Program
3. Purpose of the new rule or reason for the change:
This rule is being created due to 2020 General Session H.B. 392, Early Warning Program. H.B. 392 (2020) requires the Utah State Board of Education to create a rule to define the term "primary exceptionalities" for the early warning program.
4. Summary of the new rule or change:
This rule defines "primary exceptionalities" to have the same definition of "child with a disability" in the federal regulations for the federal Individuals with Disabilities Education Act (IDEA).

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This proposed rule is not expected to have independent fiscal impact on state government revenues or expenditures. This rule is being created due to H.B. 392 (2020).
B) Local governments:
This proposed rule is not expected to have independent fiscal impact on local governments' revenues or expenditures. This rule is being created due to H.B. 392 (2020).
C) Small businesses ("small business" means a business employing 1-49 persons):
This proposed rule is not expected to have independent fiscal impact on small businesses' revenues or expenditures. This rule is being created due to H.B. 392 (2020).

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This proposed rule is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule is being created due to H.B. 392 (2020).

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. This rule is being created due to H.B. 392 (2020).

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses. This proposed rule has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53F-4-207(2)(d)	Subsection 53E-3-401(4)
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	02/01/2021
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10. This rule change MAY become effective on:	02/08/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/14/2020
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R277. Education, Administration.

R277-627. Early Warning Program.

R277-627-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53F-4-207(2)(d), which requires the board to make rules to define primary exceptionalities.

(2) The purpose of this rule is to define primary exceptionalities for the purpose of the term being used in the early warning program.

R277-627-2. Definitions.

(1) "Primary exceptionalities" means the same as a "child with a disability" defined by 34 CFR Section 300.8.

KEY: early warning system, special education

Date of Enactment or Last Substantive Amendment: 2021
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-4-207(2)(d)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-929	Filing No. 53250

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state:	Salt Lake City, UT 84111

Mailing address:	PO Box 144200	
City, state, zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-929. State Council on Military Children
3. Purpose of the new rule or reason for the change:
The purpose for the change is to update this rule to establish the purple star schools program in Utah.
4. Summary of the new rule or change:
The amendments include requirements for Utah schools to apply for the purple star schools designation and sets guidelines for Utah State Board of Education (Board) staff to administer the program.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. This new designation program should not create significant new costs for the Board or local education agencies (LEAs) that choose to apply to the program.
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This new designation program should not create significant new costs for the Board or LEAs that choose to apply to the program.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. This new designation program should not create significant new costs for the Board or LEAs that choose to apply to the program.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The new designation program should not create significant new costs for the Board or LEAs that choose to apply to the program.

F) Compliance costs for affected persons:

There are no significant compliance costs for affected persons. The new designation program should not create significant new costs for the Board or LEAs that choose to apply to the program.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on LEAs and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Section 53E-3-920.1	Subsection 53E-3-401(4)
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in

the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	02/01/2021

10. This rule change MAY become effective on:	02/08/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/14/2020
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**R277. Education, Administration.
R277-929. State Council on Military Children.
R277-929-1. Authority and Purpose.**

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53E-3-920.1, which requires the Board to create a state council in accordance with the Interstate Compact on Educational Opportunity for Military Children.
- (2) The purpose of this rule is to:
 - (a) establish a state council for military children[-]; and
 - (b) establish a purple star schools designation for Utah schools meeting eligibility criteria.

R277-929-2. Definitions.

- (1) "Commissioner" means the compact commissioner appointed by the Governor in accordance with Section 53E-3-921.
- (2) "Compact" means [the]Title 53E, Chapter 3, Part 9, Interstate Compact on Educational Opportunity for Military Children.
- (3) "Designated staff point of contact" means a counselor, administrator, teacher, or other staff member who is familiar with the needs of military students and the protections afforded to service members' children under the compact.
- (~~3~~4) "State council" means the State Council for Military Children created through this rule.

R277-929-3. Establishment of State Council.

- (1) There is hereby created the State Council for Military Children.
- (2) The state council shall:
 - (a) coordinate implementation of the compact amongst:
 - (i) state agencies;
 - (ii) LEAs; and

- (iii) military installations;
- (b) safeguard the interests of military impacted students within the state;
- (c) make recommendations for laws and policies to benefit military impacted students; and
- (d) promote awareness of compact rights and protections with military families.
- (3)(a) The Superintendent shall invite the individuals identified in Subsection 53E-3-909(1) to participate in the state council.
- (b) The Superintendent may invite other individuals with interest or expertise in working with military students to participate in the state council.
- (4) The Superintendent shall coordinate with the Commissioner to schedule meetings of the state council.
- (5) The state council shall meet on an annual basis or with such other frequency as may be required by compact rules.
- (6) The Commissioner shall be responsible for filing all required reports with the national compact office.

R277-929-4. Purple Star Schools.

- (1) There is hereby created a purple star schools designation for Utah schools that excel in protecting the educational needs of students from military families.
- (2) The Commissioner shall establish an application process for Utah schools interested in the purple star schools designation.
- (3) The Commissioner shall review purple star school applications with the state council created in Section R277-929-3 and make recommendations for the purple star school designation.
- (4) The Superintendent shall award the purple star school designation to a Utah school that:
 - (a) has a designated staff point of contact for military students and families who acts as the primary link between a military family and the school;
 - (b) has a dedicated page on its school website featuring information and resources for military families;
 - (c) has a student-led transition program to include a student transition team coordinator;
 - (d) provides professional development for additional staff on special considerations for military students and families; and
 - (e) meets at least one of the following criteria:
 - (i) the school shall commit to hold a school-wide military recognition event;
 - (ii) the school's governing board shall pass a resolution publicizing support for military students and families; or
 - (iii) the school shall partner with a school liaison officer to provide opportunities for active duty parents to volunteer in the school.
- (5)(a) The Superintendent shall approve a seal for schools with a purple star school designation.
- (b) A purple star school may use the approved seal on school letterhead, the school's website, and other school publications.
- (6) The Superintendent shall publish a list of schools receiving the purple star designation on the Board's website.
- (7)(a) The Commissioner shall review a school's purple star school designation with the state council every three years.
- (b) The Superintendent may extend or remove a school's purple star designation based on the results of the state council's review.

KEY: state council, military, compact
Date of Enactment of Last Substantive Amendment: ~~March 12, 2020~~ **2021**
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R317-8	Filing No. 53240

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144870	
City, state, zip:	Salt Lake City, UT 84114-4870	
Contact person(s):		
Name:	Phone:	Email:
Donald Hall	801-536-4492	dghall@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R317-8. Utah Pollutant Discharge Elimination System (UPDES)
3. Purpose of the new rule or reason for the change:
The purpose of the proposed amendments to Section R317-8-1 is to add descriptions of federal rule references in Subsection R317-8-1(10). The five main purposes of the proposed amendments in Section R317-8-10 are to: 1. reword definitions and requirements of the rule to make them more concise and understandable; 2. edit the large weather event definition in Subsection R317-8-10(2) to allow rapid snow melt events which will provide the regulated an enforcement exemption when following requirements outlined in the rule; 3. allow the Director of the Division of Water Quality (DWQ) to approve certified nutrient management planners that prepare nutrient management plans for animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs);

- allow the regulated community to develop voluntary compliance assistance programs for some enforcement penalty relief, when the program is approved by the Director of DWQ; and
- remove duplication of references to federal rules that are already included in Section R317-8-1.

4. Summary of the new rule or change:

The proposed changes to Sections R317-8-1 and R317-8-10 relate to the AFO and CAFO compliance and permit requirements. These changes implement the federal CAFO regulations under the National Pollutant Discharge Elimination System (NPDES) program. In Utah, the NPDES program is implemented through state rule and permits of the Utah Pollutant Discharge Elimination System (UPDES) program. The proposed rule changes would improve federal rule referencing and implementation of the state CAFO program.

In Subsection R317-8-1-1(10), improved referencing to federal requirements and descriptions of federal rule references have been added.

In Subsection R317-8-10(10.1), federal references were moved to Subsection R317-8-1-(1.10) to consolidate references into one rule location.

In Subsection R317-8-10(10.2), for thirteen definitions, definitions were reworded, added to the rule, or deleted to better implement the federal CAFO program in state rule.

In Subsection R317-8-10(10.3), rule requirements were clarified and consolidated.

In Subsection R317-8-10(10.6), the proposed changes help clarify required Nutrient Management Plan (NMP) content and which AFOs and CAFOs require a NMP.

In Subsection R317-8-10(10.7), the proposed rule amendments clarify the Technical Standard requirements.

In Subsection R317-8-10(10.8), the subsection was changed to include program requirements for reasonable measures and to describe which AFOs and CAFOs qualify for the reasonable measure provisions.

In Subsection R317-8-10(10.9), title and entire content was deleted or moved to Subsection R317-8-10(8).

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
None--The rule changes would have no net effect on the state budget or the budget of the Utah Division of Water Quality (Division). If the Division is to train or approve certified nutrient management planners, the costs of training which are labor and materials, would already be included the Division's budget. Current employees would

do the labor and any printed material costs would be minimal (less than \$100) and would come out of existing budgets. No additional funding would be required to train certified planners. No other state agencies would have financial impact from the rule changes. There would not be any savings in the state budget.

B) Local governments:

None--There should be no effect on costs or savings to local governments. Local governments do not have oversight of AFOs and CAFOs as pertaining to the state rule.

C) Small businesses ("small business" means a business employing 1-49 persons):

None--The rule changes would have no effect on costs to the regulated community and no effect on other small businesses. The rule changes allow AFOs and CAFOs to voluntarily participate in new compliance assistance programs for enforcement protections. An AFO or CAFO may need to improve waste storage structures or improve planning in order to meet the requirements of a new compliance assistance program. However, participation in a compliance assistance program is voluntary. This rule will not require an AFO or CAFO to invest or participate in any new compliance assistance program that may be developed under the new rule. There would not be savings for the regulated community or for other small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

None--There are 5 or less businesses in the regulated community employing 50 or more persons. The rule changes would have no effect on costs to the regulated community and have no effect on other non-small businesses. The rule changes allow larger AFOs and CAFOs to voluntarily participate in new compliance assistance programs for enforcement protections. An AFO or CAFO may need to improve waste storage structures or improve planning in order to meet the requirements of a new compliance assistance program. However, participation in a compliance assistance program is voluntary. The new rule will not require an AFO or CAFO to spend more on compliance. There would not be savings for the regulated community or for other non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The estimate is \$15,000. The rule changes could result in approximately \$15,000 in lost revenue for non-governmental certified planners. There are two or three out-of-state consultants that prepare nutrient management plans for AFOs and CAFOs in Utah. The amended rule

facilitates approval of additional certified nutrient management planners by DWQ. The new certified planners are likely to be state employees from the Utah Department of Agriculture and Food (UDAF). UDAF would not receive compensation for the preparation and approval of nutrient management plans (NMPs). It is anticipated that UDAF would use current employees to prepare NMPs and that no new employees would be hired. The NMPs prepared by certified planners at UDAF would be NMPs the consultants did not prepare, resulting in lost revenue. It is estimated that consultants would prepare about three NMPs per year at a fee of about \$5,000 per NMP. Lost revenue for the consultants would be approximately \$15,000 per year. AFOs and CAFOs could still hire consultants to prepare NMPs. However, that is unlikely since the AFOs and CAFOs can have NMPs prepared at no cost by UDAF certified planners.

F) Compliance costs for affected persons:

None--There will be no additional costs to AFOs and CAFOs to comply with the rule unless they volunteer to be part of a compliance assistance program.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$15,000	\$15,000	\$15,000
Total Fiscal Cost	\$15,000	\$15,000	\$15,000
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	-\$15,000	-\$15,000	-\$15,000

H) Department head approval of regulatory impact analysis:

The Executive Director of the Utah Department of Environmental, Scott Baird, has reviewed and approved this fiscal rule analysis and fiscal information.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The proposed rule amendments would not affect non-animal agriculture businesses financially, either positively or negatively. Also, the regulated community would not have additional costs from the proposed rule changes. A few out-of-state consultants may lose approximately \$15,000 per year from lost nutrient management planning fees. As enabled through proposed rule changes, additional certified planners could be provided to prepare nutrient management plans at no cost to the regulated community.

B) Name and title of department head commenting on the fiscal impacts:

Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Title 19, Chapter 5	40 CFR 122	40 CFR 124
40 CFR 412	40 CFR 503	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/01/2021

10. This rule change MAY become effective on: 02/08/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative

Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Erica B. Gaddis, Director	Date:	12/08/2020
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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 Director has responsibility for the administration of the UPDES program, including pretreatment. The responsibility for the program is delegated to the Director in accordance with UCA Subsection 19-5-104(11) and UCA Subsection 19-5-107(2)(a). The 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 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 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 discharges 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 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 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) "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.

(15) "Draft permit" means a document prepared under R317-8-6.3 indicating the 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.

(16) "Effluent limitation" means any restriction imposed by the Director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the State.

(17) "Effluent limitations guidelines" means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

(18) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

(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.

(20) "General permit" means any UPDES permit authorizing a category of discharges within a geographical area, and issued under R317-8-2.5.

(21) "Hazardous substance" means any substance designated under 40 CFR Part 116.

(22) "Indirect discharge" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(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.

(24) "Major facility" means any UPDES facility or activity classified as such by the Director in conjunction with the Regional Administrator.

(25) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(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.

(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.

(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.

(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.

(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.

(31) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under the UPDES program.

(32) "Permit" means an authorization, license, or equivalent control document issued by the Director to implement the requirements of the UPDES rules. "Permit" includes a UPDES "general permit." The

NOTICES OF PROPOSED RULES

term does not include any document which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

(33) "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the United States government.

(34) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm-water runoff or return flows from irrigated agriculture.

(35) "Pollutant" means, for the purpose of these 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.

(36) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the State, unless such alteration is necessary for the public health and safety. Alterations which are not consistent with the requirements of the CWA and implementing regulations shall not be deemed to be alterations necessary for the public health and safety. A discharge not in accordance with Utah Water Quality Standards, stream classification, and UPDES permit requirements, including technology-based standards shall be deemed to be pollution.

(37) "Primary industry category" means any industry category listed in R317-8-3.11.

(38) "Privately owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a POTW.

(39) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(40) "Proposed permit" means a UPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and adjudicative proceedings, which is sent to EPA for review before final issuance by the Director. A proposed permit is not a draft permit.

(41) "Publicly-owned treatment works" (POTW) means any facility for the treatment of pollutants owned by the State, its political subdivisions, or other public entity. For the purposes of these 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.

(42) "Recommencing discharger" means a source which resumes discharge after terminating operation.

(43) "Regional Administrator" means the Regional Administrator of the Region VIII office of the EPA or the authorized representative of the Regional Administrator.

(44) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with the Utah Water Quality Act and rules promulgated pursuant thereto.

(45) "Secondary industry category" means any industry category which is not a primary industry category.

(46) "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

(47) "Seven (7) consecutive day discharge limit" means the highest allowable average of daily discharges over a seven (7) consecutive day period.

(48) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of CWA.

(49) "Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet dumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

(50) "Sewage sludge use or disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

(51) "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

(52) "Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act and which is required to obtain a permit under R317-8-2.1.

(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.

(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.

(55) "Thirty (30) consecutive day discharge limit" means the highest allowable average of daily discharges over a thirty (30) consecutive day period.

(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.

(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.

(58) "Variance" means any mechanism or provision under the UPDES rules which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(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.

(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.

(61) "Whole effluent toxicity" means the aggregate toxic effect of an effluent as measured directly by a toxicity test.

(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 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 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

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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 runoff or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

1.7 ABBREVIATIONS AND ACRONYMS. The following abbreviations and acronyms, as used throughout the UPDES 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. The Division will investigate and provide written response to all citizen complaints. In addition, the 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 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 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 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 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 July 30, 2012, with the following changes:

(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 "surface waters" of the state for all federal regulation references to "surface water," "waters of the United States," "navigable waters," or "U.S. waters."

(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 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 for the "NPDES permitting authority"

(b) Substitute "UPDES" for "NPDES"

(18) Effective as of July 30, 2012, 40 CFR 122.21(i) Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities, 40 CFR 122.23(a) Concentrated animal feeding operations, [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) Authorization to discharge, 40 CFR 122.42(e) Additional conditions applicable to specified categories of NPDES permits, 40 CFR 122.62(a)(17) Modification or revocation and reissuance of permits, Nutrient Management Plans, and 40 CFR 122.63(h) Minor modification of permits, changes to the terms of a CAFO's Nutrient Management Plan, 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."

R317-8-10. Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs).

10.1 Applicability of Rule R317-8, Rule Compatibility, and Federal Rule Incorporation.

(1) [This rule] Section 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 Section R317-8-10 conflict with the requirements, definitions, or conditions pertaining to animal feeding operations or concentrated animal feeding operations in other parts of Rule R317-8, the requirements, definitions, and conditions in [this] Section 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.

"25-year, 24-hour storm event" means the 25-year, 24-hour storm event and "100-year, 24-hour storm event" means the 100-year, 24-hour storm event as defined in 40 CFR 412.2(i).

"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.

"Certified Nutrient Management Planner" means a person who, after appropriate NRCS or division training, is approved and certified by the Utah Natural Resources Conservation Services (NRCS) or the Director, to develop and approve nutrient management plans and comprehensive nutrient management plans.

"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 as a CAFO.

"Approved Agriculture Certificate of Environmental Stewardship Program (ACES)" 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 Subsection R317-8-1.5, except that [for purposes of this] in Section 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

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- (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~~ in Subsection 19-5-105.5(3)(b)(iii) means either:

~~(a) 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 over a 30 day period at an AFO or CAFO that~~

~~(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] 30-day period, plus either:~~

~~(ii) (A) for a poultry, swine, or veal AFO or CAFO;~~

~~(i) a 100-year, 24-hour storm event for [the area; or] poultry, swine, or veal AFO or CAFO; or~~

~~(B) for all other AFOs or CAFOs; (ii) a 25-year, 24-hour storm event for [the area.] any other AFOs or CAFOs; or~~

~~(b) rapid snow or ice melt at the AFO or CAFO that occurs during a 7-day period which results in the runoff of a volume of water equivalent to (a).~~

"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 a ~~an~~ Medium 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~~ in Subsection 19-5-105.5(3)(b)(iii) means the measures described in Subsection R317-8-10.98.

"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 a ~~an~~ Small AFO ~~that confines the number of animals to be classified as a Small AFO,~~ where the following conditions are met:

(a) ~~(+)~~ the Small AFO discharges;

~~(i) 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) ~~after providing written notification to the Utah Conservation Commission.~~

"Surface Waters of the State" for purposes under Section R317-8-10 means Waters of the State as defined in Subsection R317-8-1.5~~(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)(1)(xi) through (ix). CAFOs that do not meet these requirements must apply for a UPDES permit.

(3) ~~An~~ ~~Small~~ AFO ~~may only~~ shall be designated as a CAFO ~~if~~ per the criteria in 40 CFR 122.23(c)

~~(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~~ Nutrient Management Plans.

(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.~~ Nutrient Management Plan (NMP) or Comprehensive Nutrient Management Plan (CNMP) content and requirements for compliance under this rule will include, as applicable and needed for an AFO or CAFO, the following:

~~(a) the federal requirements incorporated by rule in Subsection R317-8-1.10;~~

~~(b) the requirements of 40 CFR 122.42(e)(1)(i) through (ix) and the technical standards needed to implement those requirements at an AFO or CAFO as specified in rule R317-8-10.7; and~~

~~(c) for permitted AFOs and CAFOs, the NMP or CNMP must also include and be consistent with the requirements of the UPDES permit.~~

~~(2) NMPs or CNMPs shall be developed and implemented for the following AFOs and CAFOs, as applicable, and must be approved by a certified nutrient management planner:~~

~~(a) AFOs and CAFOs seeking CAFO permit coverage or with CAFO permit coverage;~~

~~(b) AFOs and CAFOs with permit by rule coverage;~~

~~(c) AFOs and CAFOs with coverage under a compliance assistance program approved by the Director for purposes of compliance to reasonable measures under Subsection 19-5-105.5(3)(b)(ii);~~

~~(d) AFOs and CAFOs participating in the ACES Program;~~

~~(e) AFOs and CAFOs seeking to receive grant or loan funding through a division funding program; and~~

~~(f) AFOs and CAFOs under an enforcement action issued by the Director.~~

~~(3) NMPs or CNMPs for AFOs and CAFOs listed in Subsections R317-8-10.6(2)(a), (c), and (f), shall be signed or stamped by a Utah Professional Engineer or signed by a Natural Resources Conservation Service employee/engineer with proper engineering job approval authority delegated from the Natural Resources Conservation Service, when new or existing structures or facilities need to be designed, constructed or substantially altered at an AFO's or CAFO's production area or land application area.~~

10.7 ~~Nutrient Management Plans~~ Technical Standards.

~~(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.]~~ Technical standards for NMP or CNMP preparation, content, and implementation are:

(a) the practices, standards, and requirements of the Utah Natural Resources Conservation Service (NRCS) Practice Standard 590, Nutrient Management, dated October 2019 and the Utah Manure Application Risk Index (UMARI); and

(b) the NRCS practice standards, policies, specifications, and best management practices needed for NMP or CNMP preparation, content, or implementation for compliance with 40 CFR 122.42(e)(1)(i) through (ix), as needed for a specific AFO or CAFO.

(2) [An NMP for permitted facilities shall be approved by an NRCS certified planner.] Implementation of these standards requires evaluation and nutrient management planning specific to each individual AFO or CAFO.

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 and Agriculture Discharges.~~

~~(1) As provided in Subsection 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] as provided by Subsection 19-5-105.5(3)(b)(iii), if it has [obtained and is in compliance with a UPDES CAFO permit.]~~ implemented a NMP or CNMP according to Subsection R317-8-10.6, as applicable to an AFO or CAFO, and is participating in any of the following:

~~([3]a) [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.]~~ a UPDES CAFO permit;

~~(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] permit by rule as outlined in Subsection R317-10.8(3);~~

~~(c) [It has provided one time notification to the Division that it has implemented reasonable measures under this part 10.9.]~~ a compliance assistance program approved by the Director; or

~~(d) the ACES Program.~~

~~([4]3) [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)–(f)]~~ 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]~~

NOTICES OF PROPOSED RULES

(b) [i]t keeps records adequate to demonstrate that it has met the requirements in [this paragraph (4)]Subsection R317-8-10.8(3) 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)]Subsection R317-8-10(3);
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: ~~April 1, 2020~~2021

Notice of Continuation: September 12, 2017

Authorizing, and Implemented or Interpreted Law: 19-5; ~~19-5-104; 40 CFR 503; 40 CFR 124~~40 CFR 122; 40 CFR 124; 40 CFR 412; 40 CFR 503

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R317-8	Filing No. 53244

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144870	
City, state, zip:	Salt Lake City, UT 84114-4870	
Contact person(s):		
Name:	Phone:	Email:
Lisa Stevens	801-536-4386	LStevens@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R317-8. Utah Pollutant Discharge Elimination System (UPDES)
3. Purpose of the new rule or reason for the change:
The rule change is being initiated in response to H.B. 226 which was passed in the 2020 General Session. Its intent is to make the storm water rules and permits consistent. In addition, this rule change is designed to:

1. reorganize storm water rules making them easier to locate and increase readability,
2. remove inaccuracies; and
3. correct outdated references.

4. Summary of the new rule or change:

Storm water rules are currently split up in Subsections R317-8-3(3.9), R317-8-4(4.1)(15)(c), and R317-8-4(4.2)(18). The proposed amendments move the text into a new Section R317-8-11 dedicated to storm water to make access and review easier.

Subsection R317-8-1(1.6) was changed to update references to text that was previously in Subsection R317-8-3(3.9) and was moved to Section R317-8-11. A definition for Maximum Extent Practicable (MEP) was added since this term is used in rule. This definition is based on the federal clean water act and matches the definition in existing storm water permits.

Subsections R317-8-1(1.10), R317-8-3(3.1), R317-8-3(3.2), R317-8-3(3.4), and R317-8-3(3.5) were changed to update references to text that was previously in Subsection R317-8-3(3.9) and was moved to Section R317-8-11.

Section R317-8-11, Municipal, Industrial, and Construction Storm Water Discharges, was created with the text from Subsections R317-8-3(3.9), R317-8-4(4.1)(15)(c), and R317-8-4(4.2)(18) with the following major modifications:

1. Added Subsection R317-8-11(11.1) that describes rule applicability.
2. Added Subsection R317-8-11(11.2) that references the storm water definitions in Subsection R317-8-1(1.6).
3. Reordered subsections to improve readability.
4. Separated the requirements for large construction activities that are greater than five acres from industrial activities.
5. Combined small and large construction activities. Requirements were combined where possible because they are permitted the same.
6. Combined large, medium, and small municipal separate storm sewer system (MS4) requirements where possible since they are permitted in the same fashion.
7. Updated references of Executive Secretary to Director.
8. Removed outdated text that did not accurately reflect current practices.
9. Updated all references for moved content.
10. Corrected references that were incorrect.

- 11. Modified text to meet Office of Administrative Rules requirements (removal of superfluous phrases such as "the provisions of" before a citation, removal of the term and/or, etc.).
- 12. Added retention requirements that are currently in municipal storm water discharge permits.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
None--The proposed amendments do not change any requirements or procedures. They reflect the requirements and procedures that are currently in the existing storm water discharge permits. Therefore, they would have no net effect on the state budget or the budget of the Utah Division of Water Quality.
B) Local governments:
None--The proposed amendments do not change any requirements or procedures. They reflect the requirements and procedures that are currently in the existing storm water discharge permits with no anticipated cost or savings to local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
None--The proposed amendments do not change any requirements or procedures. They reflect the requirements and procedures that are currently in the existing storm water discharge permits with no anticipated cost or savings to small businesses.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
None--The proposed amendments do not change any requirements or procedures. They reflect the requirements and procedures that are currently in the existing storm water discharge permits with no anticipated cost or savings to non-small businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
None--The proposed amendments do not change any requirements or procedures. They reflect the requirements and procedures that are currently in the existing storm water discharge permits with no anticipated cost or savings to other persons.
F) Compliance costs for affected persons:
None--The proposed amendments do not change any

requirements or procedures. They reflect the requirements and procedures that are currently in the existing storm water discharge permits with no anticipated cost or savings for affected persons.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director of the Utah Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal rule analysis and fiscal information.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Since this amendment is not incorporating any new requirements, but merely reorganizing, clarifying, and putting into rule the current permit requirements, there should be no fiscal impact to any businesses.

B) Name and title of department head commenting on the fiscal impacts:
Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Title 19, Chapter 5	40 CFR 122	40 CFR 123
40 CFR 124	40 CFR 503	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/01/2021

10. This rule change MAY become effective on:	03/08/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Erica B. Gaddis, Director	Date:	12/10/2020
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**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 Director has responsibility for the administration of the UPDES program, including pretreatment. The responsibility for the program is delegated to the Director in accordance with UCA Subsection 19-5-104(11) and UCA Subsection 19-5-107(2)(a). The 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 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 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 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 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) "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.

(15) "Draft permit" means a document prepared under R317-8-6.3 indicating the 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.

(16) "Effluent limitation" means any restriction imposed by the Director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the State.

(17) "Effluent limitations guidelines" means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

(18) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

(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.

(20) "General permit" means any UPDES permit authorizing a category of discharges within a geographical area, and issued under R317-8-2.5.

(21) "Hazardous substance" means any substance designated under 40 CFR Part 116.

(22) "Indirect discharge" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(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.

(24) "Major facility" means any UPDES facility or activity classified as such by the Director in conjunction with the Regional Administrator.

(25) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(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.

(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.

(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.

(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.

(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.

(31) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under the UPDES program.

(32) "Permit" means an authorization, license, or equivalent control document issued by the Director to implement the requirements of the UPDES 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.

(33) "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the United States government.

(34) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm-water runoff or return flows from irrigated agriculture.

(35) "Pollutant" means, for the purpose of these 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

NOTICES OF PROPOSED RULES

of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(36) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the State, unless such alteration is necessary for the public health and safety. Alterations which are not consistent with the requirements of the CWA and implementing regulations shall not be deemed to be alterations necessary for the public health and safety. A discharge not in accordance with Utah Water Quality Standards, stream classification, and UPDES permit requirements, including technology-based standards shall be deemed to be pollution.

(37) "Primary industry category" means any industry category listed in R317-8-3.11.

(38) "Privately owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a POTW.

(39) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(40) "Proposed permit" means a UPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and adjudicative proceedings, which is sent to EPA for review before final issuance by the Director. A proposed permit is not a draft permit.

(41) "Publicly-owned treatment works" (POTW) means any facility for the treatment of pollutants owned by the State, its political subdivisions, or other public entity. For the purposes of these 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.

(42) "Recommencing discharger" means a source which resumes discharge after terminating operation.

(43) "Regional Administrator" means the Regional Administrator of the Region VIII office of the EPA or the authorized representative of the Regional Administrator.

(44) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with the Utah Water Quality Act and rules promulgated pursuant thereto.

(45) "Secondary industry category" means any industry category which is not a primary industry category.

(46) "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

(47) "Seven (7) consecutive day discharge limit" means the highest allowable average of daily discharges over a seven (7) consecutive day period.

(48) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of CWA.

(49) "Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet dumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

(50) "Sewage sludge use or disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

(51) "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

(52) "Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act and which is required to obtain a permit under R317-8-2.1.

(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.

(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.

(55) "Thirty (30) consecutive day discharge limit" means the highest allowable average of daily discharges over a thirty (30) consecutive day period.

(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.

(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.

(58) "Variance" means any mechanism or provision under the UPDES rules which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(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.

(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.

(61) "Whole effluent toxicity" means the aggregate toxic effect of an effluent as measured directly by a toxicity test.

(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 Director as part of a large or medium municipal separate storm sewer system. See R317-8-~~3-9~~11.3(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) "Maximum Extent Practicable" (MEP) means the technology-based discharge standard for Municipal Separate Storm Sewer Systems established by paragraph 402(p)(3)(B)(iii) of the Federal Clean Water Act (CWA), which states that permits for discharges from municipal storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design, and engineering methods, and other such provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(~~7~~8) "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 Director as part of the large or medium municipal separate storm sewer system. See R317-8-~~3-9~~11.3(6)(b) for provisions regarding this definition.

(~~8~~9) "MS4" means a municipal separate storm sewer system.

(~~9~~10) "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~~8), and (1[4]5) of this section, or designated under paragraph R317-8-~~3-9~~11.3(1)(a)[~~5~~6] of this section.

(1[~~0~~1]) "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.

(1[4]2) "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.

(1[2]3) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(1[3]4) "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.

(1[4]5) "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~~8) of this section, or designated under paragraph R317-8-~~3-9~~11.3(1)(a)[~~5~~6] 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.

(1[5]6) "Small MS4" means a small municipal separate storm sewer system.

(1[6]7) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(1[7]8) "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

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activities excluded from the UPDES program. See R317-8-~~3-9~~11.3(6)(c) and (d) for provisions applicable to this definition.

(1)~~8~~9) "Uncontrolled sanitary landfill means a landfill or open dump, whether in operation or closed, that does not meet the requirements for 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 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. The Division will investigate and provide written response to all citizen complaints. In addition, the 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 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 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 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 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 July 30, 2012, with the following changes:

(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 "surface waters" of the state for all federal regulation references to "surface water," "waters of the United States," "navigable waters," or "U.S. waters."

(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 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 Subsection R317-8-~~3-9~~11.3(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 Subsection R317-8-~~3-9~~11.3(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 Subsections R317-8-~~3-9~~11.3(4)(b)2 and [4]6; 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).]

(e)a In 122.34(b)(4)(i), replace the reference 122.26(b)(15)(i) with Subsection R317-8-~~3-9~~11.3(6)(e)1.

(e)b In 122.34(f), replace the references 122.41 through 122.49 with R317-8-4.1 through R317-8-5.4.

(e)c 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 for the "NPDES permitting authority"

(b) Substitute "UPDES" for "NPDES"

(18) Effective as of July 30, 2012, 40 CFR 122.21(i) Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities, 40 CFR 122.23 Concentrated animal feeding operations, 40 CFR 122.28(b)(2) Authorization to discharge, 40 CFR 122.42(e) Additional conditions applicable to specified categories of NPDES permits, 40 CFR 122.62(a)(17) Modification or revocation and reissuance of permits, Nutrient Management Plans, and 40 CFR 122.63(h) Minor modification of permits, changes to the terms of a CAFO's Nutrient Management Plan, 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."

R317-8-3. 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 Director as described in this 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 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 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 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 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 Subsection R317-8-~~3.9(6)~~11.3(6)(c)1 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 Subsections R317-8-3.2~~—and~~ R317-8-~~3.9~~11.3(2)(a)1.g and R317-8-11.3(2)(a)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 Director. The 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 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 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 Director to apply under R317-8-3. Forms may be obtained from the 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 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 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 rules.

(5) Completeness. The 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 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 Director, using the application form provided by the 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.

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(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 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 rules promulgated by the 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 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 Director prior to the promulgation of an applicable standard for sewage sludge use or disposal if the 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 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 Director, applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this 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 Director an address for receipt of any legal paper for service of process. The last address provided to the Director pursuant to this provision shall be the address at which the 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 Subsection R317-8-3.5 or new discharges of storm water associated with industrial activity which are subject to Subsection R317-8-~~3.9~~11.3(2)(a) except as provided by Subsection R317-8-~~3.9~~11.3(2)(a)2, shall provide the following information to the Director, using application forms provided by the 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 Subsection 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 Subsection 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 Subsection 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 Subsection 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 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) [~~the~~ 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 Subsection 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 Director pursuant to the UPDES 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 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 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 Director under Subsection R317-8-~~3-9~~11.3(3) shall be signed by a person described in [s]Subsection R317-8-3.4(1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) ~~[F]~~the authorization is made in writing by a person described in [s]Subsection R317-8-3.4(1) ~~[of this section]~~;

(b) ~~[F]~~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) ~~[F]~~the written authorization is submitted to the Director.

(3) Changes to authorization. If an authorization under [s]Subsection R317-8-3.4(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 [s]Subsection R317-8-3.4(2) ~~[of this section]~~ must be submitted to the 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]Section 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 Director, using application forms provided by the 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 Subsection 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 Subsection 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 Subsection 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 Subsection R317-8-~~3.9~~11.3. 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 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 Subsections R317-8-3.5 ~~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 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 Subsection R317-8-~~3.9~~11.3(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 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 Subsection R317-8-~~3.9~~11.3(2)(a). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in Subsection R317-8-~~3.9~~11.3 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, or E. coli, and fecal streptococcus. The 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 Director may waive the reporting requirements for one or more of the pollutants listed in Subsection 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 Subsection R317-8-3.11 [~~of this 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 Subsection 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 Subsection 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 Subsection R317-8-3.12(5) of this 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 Subsections R317-8-3.5(7)(c) and (d) to submit quantitative data for the pollutants listed in Subsection 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 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 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 Subsection 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 Director, upon request, other information as the 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) Refer to Section 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 Subsection R317-8-3.7(5) or which the Director designates under Subsection R317-8-3.7(3).

(3) Case-by-Case designation of concentrated aquatic animal production facilities.

(a) The 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 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 Director or authorized representative has conducted an

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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 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 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) Refer to Section R317-8-11. [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 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 Director may designate discharges from municipal separate storm sewers on a system wide or jurisdiction wide basis. In making this determination the 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 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 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 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 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 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)(c).

c. The 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 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.e., 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.e.; 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.e. and (1)(h)1.d. of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the 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 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 0.1 inch rainfall) storm event (in hours);

_____ f. Operators of a discharge which is composed entirely of storm water are exempt from R317-8-3.5(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)(e)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 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 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, an 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 overlaid on a map of the municipal storm sewer system, creating a series of cells;

ii. All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

iii. Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

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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)4d-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.

c. 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 Director (based on information received in part 1 of the application, the 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 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 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 Director for determining permit conditions (the 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 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~~

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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)4e 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 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 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 Director by November 18, 1991;

2. Based on information received in the part 1 application the 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 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 Director by May 18, 1992.

2. Based on information received in the part 1 application the 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 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 Director for;

1. A storm water discharge which the 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 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 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 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 Director shall make a final determination on the petition within 180 days after its receipt.~~

~~_____ (6) Provisions Applicable to Storm Water Definitions.~~

~~_____ (a) The 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 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 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 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 described under R317 8 1.6(7)(a) or (b). In making the determination under R317 8 1.6(7)(b) the 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 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.~~

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~~_____ 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)(e)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)(e) 1 through 7 or R317 8 3.9(6)(e) 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 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 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 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 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 Director once every five years;

4. Allow the Director or authorized representative to inspect the facility to determine compliance with the "no exposure" conditions;

5. Allow the 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 unpermitted 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 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 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 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 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

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information, including the possibility of fine and imprisonment for knowing violations."

(8) The 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 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 Subsection R317-8-3.11(1)(a) and (b) the 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 Director determines could cause or contribute to adverse water quality impacts.

(3) For POTWs required under Subsections 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 Subsection R317-8-5.6(1) whichever occurred later. Prior to conducting toxicity testing, permittees shall contact the Director regarding the testing methodology to be used.

(4) All POTWs with approved pretreatment programs shall provide to the 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 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

Industrial category	GC/MS fraction (1)			
	Volatile	Acid	Base/	Pesticide
Adhesives and sealants	(*)	(*)	(*)	
Aluminum Forming	(*)	(*)	(*)	
Auto and Other Laundry	(*)	(*)	(*)	(*)
Battery Manufacturing	(*)	(*)	(*)	
Coal Mining	(*)	(*)	(*)	(*)
Coil Coating	(*)	(*)	(*)	
Copper Forming	(*)	(*)	(*)	
Electric and Electronic Components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	
Explosives Manufacturing		(*)	(*)	
Foundries	(*)	(*)	(*)	
Gum and Wood Chemicals	(*)	(*)	(*)	
Inorganic Chemicals Manufacturing	(*)	(*)	(*)	
Iron and Steel Manufacturing	(*)	(*)	(*)	
Leather Tanning and Finishing	(*)	(*)	(*)	(*)
Mechanical Products Manufacturing	(*)	(*)	(*)	(*)
Nonferrous Metals Manufacturing	(*)	(*)	(*)	(*)
Ore Mining	(*)	(*)	(*)	(*)
Organic Chemicals Manufacturing	(*)	(*)	(*)	(*)
Paint and Ink Formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum Refining	(*)	(*)	(*)	(*)
Pharmaceutical Preparations	(*)	(*)	(*)	(*)
Photographic Equipment and Supplies	(*)	(*)	(*)	(*)
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-dichloroethylene
17V	1,2-dichloropropane
18V	1,2-dichloropropylene
19V	ethylbenzene
20V	methyl bromide
21V	methyl chloride
22V	methylene chloride
23V	1,1,2,2-tetrachloroethane
24V	tetrachloroethylene
25V	toluene
26V	1,2-trans-dichloroethylene
27V	1,1,1-trichloroethane
28V	1,1,2-trichloroethane
29V	trichloroethylene
30V	trichlorofluoromethane
31V	vinyl chloride

(b) ACID COMPOUNDS

1A	2-chlorophenol
2A	2,4-dichlorophenol
3A	2,4-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-chloronaphthalene
17B	4-chlorophenyl phenyl ether
18B	chrysene
19B	dibenzo(a,h)anthracene
20B	1,2-dichlorobenzene
21B	1,3-dichlorobenzene
22B	1,4-dichlorobenzene
23B	3,3-dichlorobenzidine
24B	diethyl phthalate
25B	dimethyl phthalate
26B	di-n-butyl phthalate
27B	2,4-dinitrotoluene
28B	2,6-dinitrotoluene
29B	di-n-octyl phthalate
30B	1,2-diphenylhydrazine (as azobenzene)
31B	fluoranthene
32B	fluorene
33B	hexachlorobenzene
34B	hexachlorobutadiene
35B	hexachlorocyclopentadiene
36B	hexachloroethane
37B	indeno(1,2,3-cd)pyrene
38B	isophorone
39B	naphthalene
40B	nitrobenzene
41B	N-nitrosodimethylamine

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- 42B N-nitrosodi-n-propylamine
- 43B N-nitrosodiphenylamine
- 44B phenanthrene
- 45B pyrene
- 46B 1,2,4-trichlorobenzene

- (t) Magnesium, Total
- (u) Molybdenum, Total
- (v) Manganese, Total
- (w) Tin, Total
- (x) Titanium, Total

(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

TABLE V

28 Toxic Pollutants and Hazardous Substances Required to be Identified by Existing Dischargers if Expected to be Present

- (a) Toxic Pollutants - Asbestos
- (b) Hazardous Substances
- 1. Acetaldehyde
- 2. Allyl alcohol
- 3. Allyl chloride
- 4. Amyl acetate
- 5. Aniline
- 6. 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. Diclhone
- 24. 2,2-Dichloropropionic acid
- 25. Dichlorvos
- 26. Diethyl amine
- 27. Dimethyl amine
- 28. Dinitrobenzene
- 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. Phenolsulfanate
- 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)propanoic acid)
71. Trichlorofan
72. Triethanolamine dodecylbenzenesulfonate
73. Triethylamine
74. Trimethylamine
75. Uranium
76. Vanadium
77. Vinyl Acetate
78. Xylene
79. Xylenol
80. Zirconium

3.14 APPLICATION REQUIREMENTS OF SUBSECTION R317-8-3.8(7)(E) SUSPENDED FOR CERTAIN CATEGORIES AND SUBCATEGORIES OF PRIMARY INDUSTRIES. The application requirements of Subsection R317-8-3.5(7)(c) are suspended for the following categories and subcategories of the primary industries listed in Subsection 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 Subsection 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 rules must be given in the permit. In addition to conditions required in all UPDES permits, the Director will establish conditions as required on a case-by-case basis under Subsection R317-8-4.2 and Section 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 Subsection 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 Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying,

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revoking and reissuing, or terminating the permit or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by the permit.

(9) Inspection and Entry. The permittee shall allow the Director, or an authorized representative, including an authorized contractor acting as a representative of the 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 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 Director shall be signed and certified as indicated in Subsection 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 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 Section 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 Subsection 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 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 Director. The 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 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 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 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 Subsection 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 Director in the permit to be reported within twenty-four hours, as indicated in R317-8-4.2(7). The 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 Subsections R317-8-4.1(12)[-](d), (e), and (f) at the time monitoring reports are submitted. The reports shall contain the information listed in Subsection 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 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 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 Director may approve an anticipated bypass, after considering its adverse effects, if the 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 Subsections 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 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 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 Director.

2. Emergency Bypass. Where ninety days advance notice is not possible, the permittee must notify the 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 Director the information in Subsections 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 Director as required in Subsection 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 Subsection 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 Subsection R317-8-4.1(12)(f) (twenty-four hour notice).
4. The permittee complied with any remedial measures required under Subsection 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

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others set forth in these 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 Subsections R317-8-4.1(12),(13), and (14), any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the 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 Subsection R317-8-3.5(7) or (10).
- d. The level established by the Director in accordance with Subsection 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 Subsection R317-8-3.5(9).
- d. The level established by the Director in accordance with Subsection R317-8-4.2(6).

(b) POTWs. POTWs shall provide adequate notice to the Director of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the UPDES 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 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.]~~

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 Subsection R317-8-5.6. New or reissued permits, and to the extent allowed under Subsection 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 Subsection 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 Subsection 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 Director shall institute proceedings under these 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 Subsection 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 Sections 301(b)(2) (A), (C), and (E) of CWA, any permit issued shall include effluent limitations to meet the requirements of Sections 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 Subsection R317-8-4.2(3)(a)1.

(c) The Director shall promptly modify or revoke and reissue any permit containing the clause required under Subsection 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 Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal adopted by the State. The 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 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 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 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 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 Director determines, using the procedures in Subsection 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 Subsection R317-8-4.2, when the Director determines, using the procedures in Subsection 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 Director determines in the fact sheet or statement of basis of the UPDES permit, using the procedures in Subsection 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 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 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 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 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 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 Subsection R317-8-7.3.

(5) Technology-based Controls for Toxic Pollutants. Limitations established under Subsections R317-8-4.2[-](1), (2), or (4) to control pollutants meeting the criteria listed in Subsection R317-8-4.2(5)(a) will be included in the permit, if applicable. Limitations will be established in accordance with Subsection R317-8-4.2(5)(6). An explanation of the development of these limitations will be included in the fact sheet under Subsection R317-8-6.4.

(a) Limitations will control all toxic pollutants which:

1. The Director determines, based on information reported in a permit application under Subsections R317-8-3.5(7) and (10), or in a notification under Subsection R317-8-4.1(15)(a) of this 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 Subsections 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.

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(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 Director, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by Subsections 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 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 Subsection 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 Subsection 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 Subsection 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 Subsection R317-8-4.3(8); pollutants in intake water for net limitations under Subsection R317-8-4.3(7); frequency and rate of discharge for noncontinuous discharges under Subsection R317-8-4.3(5); pollutants subject to notification requirements under Subsection 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 Subsection 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 Subsections R317-8-4.2[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 Subsection 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 Subsection R317-8-3.4; and

4. Permits for storm water discharges associated with industrial activity from inactivate 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 Subsections 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 rules.

(b) Submit a local program when required by and in accordance with Subsection R317-8-8.10 to assure compliance with pretreatment standards to the extent applicable in the UPDES rules. The local program will be incorporated into the permit as described in Subsection 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 Subsection R317-8-8 when the 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 Subsection 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 Subsection 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 Subsection 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. either:

_____ a. ~~[F]~~information is available which was not available at the time of permit issuance ~~[f]~~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. ~~[F]~~the 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 Subsection 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 ~~[f]~~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 Subsection 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 rule will be imposed as applicable. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The 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 Director for 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 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 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 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 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

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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 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 Director may establish a condition under R317-8-4.3(2)(b)2 if the applicant satisfactorily demonstrates to the 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 Director establishes permit conditions under and R317-8-4.3(2)(c):

1. The permit shall require the permittee to notify the 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 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 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.

R317-8-11. Municipal, Industrial, and Construction Storm Water Discharges.

11.1 APPLICABILITY OF RULE R317-8, RULE COMPATIBILITY, AND FEDERAL RULE INCORPORATION.

(1) Section R317-8-11, including the federal regulations incorporated by reference, shall be applicable to municipal (Subsections R317-8-11.3(c)1, R317-8-1.10(12), and R317-8-11.3(8)), industrial (Subsections R317-8-11.3(6)(c) and (d)), and construction (Subsection R317-8-11.3(6)(e)) storm water discharges.

(2) Where any requirements, definitions, or conditions in Section R317-8-11 conflict with the requirements, definitions, or conditions pertaining to storm water discharges in other parts of Rule R317-8, the requirements, definitions, and conditions in Section R317-8-11 shall govern.

11.2 DEFINITIONS APPLICABLE TO STORM WATER DISCHARGES

Refer to Subsection R317-8-1.6.

11.3 STORMWATER DISCHARGE REQUIREMENTS

(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 associated with construction activity that disturbs five or more acres;

4. a discharge from a large municipal separate storm sewer system;

5. a discharge from a medium municipal separate storm sewer system;

6. a discharge which the Director determines contributes to a violation of water quality standards 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 Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the 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) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by Subsection R317-8-11.3(1)(a) to obtain a permit, operators shall be required to obtain a UPDES permit if:

1. the discharge is from a small MS4 required to be regulated pursuant to 40 CFR 122.32 (see Subsection R317-8-1.10(12));

2. the discharge is a storm water discharge associated with construction activity pursuant to Subsection R317-8-11.3(6)(c);

3. the 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 any pollutants of concern; or

4. the 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.

(c) The 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 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.

(d) Large, medium, and small municipal separate storm sewer systems.

1. Permits must be obtained for discharges from large, medium, and small municipal separate storm sewer systems.

2. The Director may either issue one system-wide permit covering discharges from municipal separate storm sewers within a large, medium, or small municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large, medium, or small municipal separate storm sewer system including: discharges owned or operated by the same municipality; located within the same jurisdiction; 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, medium, or small municipal separate storm sewer system must either:

a. participate in a permit application as permittee or co-permittee with one or more other operators of discharges from the large, medium, or small 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

c. 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 the application is due;

ii. the permit applicant or co-applicants shall establish their ability to make a timely submission of the municipal application;

iii. each of the operators of municipal separate storm sewers within the systems described in Subsections R317-8-1.6(4), R317-8-1.6(8), 40 CFR 122.32 with substitutions per Subsection R317-8-1.10(12), or R317-8-11.3(8) that are under the purview of the designated regional authority, shall comply with the application requirements of Subsection R317-8-11.3(3).

4. One permit application may be submitted for the entirety or a portion of municipal separate storm sewers within adjacent or interconnected large, medium, or small municipal separate storm sewer systems. The Director may issue one system-wide permit covering the entirety or a portion of municipal separate storm sewers in adjacent or interconnected large, medium, or small municipal separate storm sewer systems.

5. Permits for the entirety or a portion of the discharges from large, medium, or small 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.

6. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(e) Other municipal separate storm sewers. The Director may issue permits for municipal separate storm sewers that are designated under Subsection R317-8-11.3(1)(a)6 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 Director 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. 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, each operator 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 are not subject to this section.

(h) Operators of small MS4s designated pursuant to Subsections R317-8-11.3(1)(b)1, R317-8-11.3(1)(b)3, and R317-8-11.3(1)(b)14 shall seek coverage under a UPDES permit in accordance with 40 CFR 122.33, 122.34, and 122.35 with appropriate substitutions per Subsections R317-8-1.10(11) through R317-8-1.10(13). Operators of non-municipal sources designated pursuant to Subsections R317-8-11.3(1)(b)2, R317-8-11.3(1)(b)3, and R317-8-11.3(1)(b)4 shall seek coverage under a UPDES permit in accordance with Subsection R317-8-11.3(2)(a).

(i) Operators of storm water discharges designated pursuant to Subsections R317-8-11.3(1)(b)3 and R317-8-11.3(1)(b)4 shall apply to the Director for a permit within 180 days of receipt of notice, unless

permission for a later date is granted by the Director as described in 40 CFR 124.52.

(2) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with construction activity.

(a) Individual application. Dischargers of storm water associated with industrial activity and with 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 Director is evaluating under Subsection R317-8-11.3(1)(a)6 and is not a municipal separate storm sewer, and which is not part of a group application, shall submit a UPDES application in accordance with Subsection R317-8-3.1 and supplemented by the provisions of the remainder of this section.

1. Except as provided in Subsections R317-8-11.3(2)(a)2 through R317-8-11.3(2)(a)4, the operator of a storm water discharge associated with industrial activity subject to this section shall develop before application, or in the time frame indicated by the permit:

a. a site map showing topography of the facility, or indicating the outline of drainage areas served by any outfalls covered in the application if a topographic map is unavailable, including: each of its drainage and discharge structures; the drainage area of each storm water outfall; each 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; 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. 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 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 each outfall that should contain storm water discharges associated with industrial activity has 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, and 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 from each outfall 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. any pollutant listed in the facility's UPDES permit for its storm water discharges.

iv. any information on the discharge required under Subsections R317-8-3.5(7)(d) and R317-8-3.5(7)(e);

v. an estimate of the total amount of discharge for the storm events sampled, and the method of flow measurement or estimation; and

vi. the date and duration in hours of the storm events sampled, rainfall measurements or estimates in inches of the storm event which generated the sampled runoff and the duration in hours between the storm event sampled and the end of the previous measurable, greater than 0.1 inch rainfall, storm event;

f. operators of a discharge which is composed entirely of storm water are exempt from Subsections R317-8-3.5(2) through R317-8-3.5(5), R317-8-3.5(7)(a), R317-8-3.5(7)(c), and R317-8-3.5(7)(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 Subsection R317-8-11.3(2)(a)1.e 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 Subsection R317-8-11.3(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 Subsections R317-8-3.2(3)(b), R317-8-3.2(3)(c), and R317-8-3.2(5).

2. An operator of an existing or new storm water discharge that is associated with construction activity solely under Subsection R317-8-11.3(6)(e), is exempt from the requirements of Subsections R317-8-3.5 and R317-8-11.3(2)(a)1. Such operator shall develop before application or in the time frame indicated by the permit 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;

d. proposed stabilization, erosion control, and sediment control measures to control pollutants in storm water discharges that will occur after construction operations have been completed;

e. plans for correct installation and maintenance of storm water controls;

f. a schedule for inspections to verify that storm water controls and best management practices are operating effectively; and

g. 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 Subsection R317-8-11.3(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 any time 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 Director may reasonably require to determine whether to issue a permit and may require any facility subject to Subsection R317-8-11.3(2)(a)2 to comply with Subsection R317-8-11.3(2)(a)1.

(3) Application requirements for large, medium, and small municipal separate storm sewer discharges. The operator of a discharge from a large, medium, or small municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under Subsection R317-8-11.3(1)(a)6, 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 co-applicant to the same application.

(a) Permit applications shall include:

1. General information consisting of:

i. the name, mailing address, and telephone number of the principal executive officer, ranking elected official, or duly authorized employee in charge of municipal resources used for implementing the SWMP;

ii. the operator type and legal status as a Federal, State, private, or other public entity other than Federal or State;

iii. latitude and longitude at the center of land for which authorization to discharge is being requested;

iv. the number of people that are served by the municipal separate storm sewer system; and

v. name, title, and telephone of the person responsible for overseeing implementation and coordination of the storm water management program.

2. Outfalls and receiving waters. A list of each separate storm sewer outfall and their associated receiving waters that receive discharges from the permittee's MS4. Summary description of the overall water quality concerns, priorities, 303(d) list impaired waters.

3. Best management practice identification. A summary of the chosen best management practices and description of the program elements that will be implemented (or already exist) to meet each of the storm water minimum control measures.

4. Measurable goals. Identification of goals with start and end dates for each of the storm water minimum control measures and the timeframe by which the permittee will achieve required actions, including interim milestones.

5. Certification. A certification statement that is signed in accordance with Section R317-8-3.4.

6. Contract certification for co-permittees. If more than one entity will be implementing the storm water management program then a contract certification is required. Each coordinating entity must be identified and sign to certify that local agreements and contracts have been developed and agreed upon. Permittees which are applying as co-permittees shall each submit an application and individual storm water management program document which will clearly identify the areas of the MS4 for which each of the co-permittees are responsible.

(b) A storm water management program shall be developed which 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. Separate programs may be submitted by each co-applicant. Programs may

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impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls and contain:

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. Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

b. 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;

c. Require compliance with conditions in ordinances, permits, contracts or orders; and

d. Carry out 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. Mapping. A current map of the storm sewer system showing the location of each storm sewer outfall, the name and location of each State water that receives discharges from those outfalls, storm drain pipe and other storm water conveyance structures within the MS4.

3. Characterization data. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent in accordance with Subsection R317-8-3.5(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR 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 as required by the permit including:

a. quantitative data from representative outfalls;

b. estimates of the annual pollutant load of the cumulative discharges to waters of the State from identified municipal outfalls, the event mean concentration of the cumulative discharges to waters of the State from identified municipal outfalls during a storm event, and 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 Subsection R317-8-11.3(3)(b)2 or R317-8-11.3(3)(a)2 of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under Subsection R317-8-11.3(3)(b)3; 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. Structural and source controls. 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 and a proposed schedule for implementing such controls. At a minimum, the description shall include:

a. a description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

b. 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 Subsection R317-8-11.3(3)(b)7;

c. 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;

d. 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.

e. a description of a program to monitor pollutants in runoff from operating or closed municipal landfills, treatment, storage or disposal facilities for municipal waste, or other high priority facilities owned or operated by the MS4. The description 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 Subsection R317-8-11.3(3)(b)6); and

f. 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.

5. An illicit discharge schedule. 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:

a. 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 each type of illicit discharge, 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: firefighting where such discharges or flows are identified as significant sources of pollutants, 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);

b. 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;

c. 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);

d. a description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

e. 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;

f. 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

g. a description of controls to limit overflows from municipal sanitary sewers to municipal separate storm sewer systems where necessary.

6. Priority areas. 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 Title III, Section 313 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 identify priorities and procedures for inspection and establishing and implementing control measures for such discharges.

7. Construction management program. 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:

a. a description of procedures for site planning which incorporate consideration of potential water quality impacts;

b. a description of requirements for nonstructural and structural best management practices;

c. 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

d. a description of appropriate educational and training measures for construction site operators.

8. Long-term storm water management for new development and redevelopment. The program shall include:

a. requirements for construction activities, as defined in Subsection R317-8-11.3(6)(e)1, associated with new development to retain storm water on site and prevent the off-site discharge of precipitation from rainfall events less than or equal to the 80th percentile rainfall event or a predevelopment hydrologic condition, whichever is less;

b. requirements for construction activities, as defined in Subsection R317-8-11.3(6)(e)1, associated with redevelopment projects which will increase the impervious surface by greater than 10% to retain storm water on site and prevent the off-site discharge of the net increase in the volume associated with precipitation from rainfall events less than or equal to the 80th percentile rainfall event; and

c. a process for addressing and documenting infeasibilities associated with Subsections R317-8-11.3(3)(b)8.a and b.

9. Applicability. Where requirements under Subsections R317-8-11.3(3)(b)3.b and R317-8-11.3(3)(b)4 through R317-8-11.3(3)(b)8 are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under Subsection R317-8-11.3(1)(a)6, R317-8-1.6(4)(b) or R317-8-1.6(8)(b) from such requirements. The 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 Subsection R317-8-11.3(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 Subsection R317-8-11.3(4)(a)2, for any storm water discharge associated with industrial activity identified in Subsections R317-8-11.3(6)(d)1 through R317-8-11.3(6)(d)10 that is not authorized by a storm water general permit, a permit application made pursuant to Subsection R317-8-11.3(2) must be submitted to the Director 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 Director by March 10, 2003.

(b) For any discharge from a large municipal separate storm sewer system the application shall be submitted to the Director by November 18, 1991.

(c) For any discharge from a medium municipal separate storm sewer system the application shall be submitted to the Director by May 18, 1992.

(d) A permit application shall be submitted to the Director within 180 days of notice, unless permission for a later date is granted by the Director for:

1. A storm water discharge which the 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, or

2. A storm water discharge subject to Subsection R317-8-11.3(2)(a)5.

(e) Facilities with existing UPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications for individual permits shall be submitted 180 days before the expiration of such permits. New applications for general permit coverage shall be submitted within 30 days of permit expiration date unless otherwise specified in the permit. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth in Subsection R317-8-11.3(4)(a).

(f) For any storm water discharge associated with construction activity identified in Subsection R317-8-11.3(6)(e)1, see Subsection 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, with substitutions as described by Subsection R317-8-1.10(11), must be submitted to the Director by:

1. March 10, 2003 if designated under 40 CFR 122.32 (a)(1), with substitutions as described by Subsection R317-8-1.10(10), unless your MS4 serves a jurisdiction with a population under 10,000 and the Director has established a phasing schedule under 40 CFR 123.35 (d)(3); or

2. Within 180 days of notice, unless the Director grants a later date, if designated under 40 CFR 122.32(a)(2) and 40 CFR 122.33(c)(2) with substitutions as described by Subsection R317-8-1.10(10) and (11).

(5) Petitions.

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(a) Any operator of a municipal separate storm sewer system may petition the Director to require a separate UPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the Director 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 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 Director for the designation of a large, medium, or small municipal separate storm sewer system as defined by Subsections R317-8-1.6(4), R317-8-1.6(7), and R317-8-1.6(14).

(e) The 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 Director shall make a final determination on the petition within 180 days after its receipt.

(6) Provisions Applicable to Storm Water Definitions.

(a) The 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 Subsection R317-8-1.6(4)(a) or (b). In making the determination under Subsection R317-8-1.6(4)(b) the Director may consider the following factors:

1. physical interconnections between the municipal separate storm sewers;

2. location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in Subsection R317-8-1.6(4)(a);

3. quantity and nature of pollutants discharged to waters of the State;

4. nature of the receiving waters; and

5. other relevant factors; or

6. the 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 Subsection R317-8-1.6(4).

(b) The 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 described under Subsection R317-8-1.6(8)(a) or R317-8-1.6(8)(b). In making the determination under Subsection R317-8-1.6(8)(b) the Director may consider the following factors:

1. physical interconnections between the municipal separate storm sewers;

2. location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in Subsection R317-8-1.6(8)(a);

3. quantity and nature of pollutants discharged to waters of the State;

4. nature of the receiving waters; and

5. other relevant factors; or

6. the 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 Subsections R317-8-1.6(8)(a), R317-8-1.6(8)(b), and R317-8-1.6(8)(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 Rule R317-8. For the categories of industries identified in this section, the term includes 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 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 Subsections R317-8-11.3(d)1 through R317-8-11.3(d)10, include those facilities designated under Subsection R317-8-11.3(1)(a)6.

(d) The following categories of facilities are considered to be engaging in "industrial activity" for the purposes of this section and as referenced in Subsection R317-8-11.3(1)(a)2 and R317-8-11.3(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 Subsection R317-8-11.3(6)(d)10;

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 industries, 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 or 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, 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, such as vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are otherwise identified under Subsections R317-8-11.3(6)(d)1 through R317-8-11.3(6)(d)7 or R317-8-11.3(6)(d)9 through R317-8-11.3(6)(d)10 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; and

10. 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 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. 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 acre. 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 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 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 pollutants of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for construction sites for the pollutants 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 each source, and a margin of safety. For this paragraph, the pollutants 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 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; and

2. any other construction activity designated by the 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 runoff, and the discharger satisfies the conditions in Subsections R317-8-11.3(7)(a) through R317-8-11.3(7)(d). "No exposure" means that industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snow melt, and runoff. Industrial materials or activities include 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 Subsection R317-8-3.4, 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 Subsection R317-8-11.3(7)(b);

3. submit the signed certification to the Director once every five years;

4. allow the Director or authorized representative to inspect the facility to determine compliance with the "no exposure" conditions;

5. allow the 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.

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(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, meaning banded or otherwise secured and without operational taps or valves, provided those containers are not deteriorated and do not leak;

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 Subsection R317-8-11.3(6)(e) are not eligible for this conditional exclusion.

2. This conditional exclusion from the requirement for a 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 runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes 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. The 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 Director in determining if the facility qualifies for the no exposure exclusion:

1. the legal name, address and phone number of the discharger as identified in Subsection 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. an indication 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 or leaks;

c. materials or products from past industrial activity;

d. materials handling equipment, except adequately maintained vehicles;

e. materials or products during loading and 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 of pollutants;

g. materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

h. materials or products handled or stored on roads or railways owned or maintained by the discharger;

i. waste material, except waste in covered and non-leaking containers such as dumpsters;

j. application or disposal of process wastewater, unless otherwise permitted; and

k. particulate matter or visible deposits or residuals from roof stacks or vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.

4. No exposure certifications must include the following certification statement, and be signed in accordance with the signatory requirements of Section 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. I certify under penalty of law that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document. I understand that I am obligated to submit a no exposure certification form once every five years to the Division of Water Quality and understand that I must obtain coverage under a UPDES permit prior to any point source discharge of storm water from the facility. Additionally, 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 Director may designate small MS4s other than those described in 40 CFR 122.32(a)(1), with substitutions described in Subsection R317-8-1.10(12), 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 MS4s that cause a significant contribution of pollutants to waters of the State;

6. small MS4s that do not have effective programs to protect water quality by other programs; or

7. other appropriate criteria.

(b) Permits for designated MS4s under this paragraph shall be under the same requirements as small MS4s designated under 40 CFR 122.32(a)(1) with substitutions as described in Subsection R317-8-1.10(12).

(9) Reporting requirements for municipal separate storm sewer systems. The operator of a large, medium, or small municipal separate storm sewer system or a municipal separate storm sewer that has been determined by the Director under Subsection R317-8-11.3(1)(a)6 must submit an annual report by October 1st each year. The report shall include:

1. the status of implementing the components of the storm water management program that are established as permit conditions;

2. a summary of data or indicators of overall plan effectiveness, including monitoring data, that is accumulated throughout the reporting year;

3. a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under Subsection R317-8-11.3(3)(b). 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;

4. a summary describing the number and nature of enforcement actions, inspections, and public education programs; and

5. identification of water quality improvements or degradation.

11.4 QUALIFYING STATE OR LOCAL PROGRAMS

(1) For storm water discharges associated with construction activity identified in Subsection R317-8-11.3(6)(e), the 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 Director must include those elements as conditions in the permit. A qualifying State or local erosion and sediment control program is one that includes:

(a) requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(b) 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;

(c) requirements for construction site operators to develop and implement a storm water pollution prevention plan that 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

(d) requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in Subsection R317-8-11.3(6)(e), the 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 Subsection R317-8-11.4(1) 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.

KEY: water pollution, discharge permits

Date of Enactment or Last Substantive Amendment: [~~April 1, 2020~~2021]

Notice of Continuation: September 12, 2017

Authorizing, and Implemented or Interpreted Law: 19-5; [~~19-5-104~~40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 503]; ~~40-CFR 124~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R381-40	Filing No. 53236

Agency Information

1. Department:	Health		
Agency:	Child Care Center	Licensing Committee	
Building:	Highland		
Street address:	3760 S Highland Drive		
City, state:	Salt Lake City, UT		
Mailing address:	PO Box 142003		
City, state, zip:	Salt Lake City, UT 84114-2003		
Contact person(s):			
Name:	Phone:	Email:	
Simon Bolivar	801-803-4618	sbolivar@utah.gov	

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:
R381-40. Commercial Preschool Programs
3. Purpose of the new rule or reason for the change:
According to the Child Care Licensing Act, Title 26, Chapter 39, commercial preschool programs fall under the definition of childcare. However, there is no rule that currently addresses this type of childcare industry. Therefore, a rule that meets this type of childcare had to be written in order to help protect the health and safety of children cared for at these childcare facilities.
4. Summary of the new rule or change:
This rule addresses 22 foundational topics related to the health and safety of children in care between the ages of two and four years old, and five years old if the child is not attending school. It is organized by sections, following the same center rule style of the other Child Care Licensing center rules. This rule also addresses the specific type of care offered by these types of childcare programs.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The Child Care Center Licensing Committee does not anticipate any additional costs due to the proposed rule because the estimated number of new facilities will be manageable by the current staff.
There are 27 facilities in the industry in question (North American Industry Classification System (NAICS) 624410) in Utah that will require this license type, the state may have an additional initial revenue from the required background checks at \$53.25 each and licensure costs at \$262 plus \$1.75 per child fee per provider. That there are

any other facilities this new rule may affect is not known to Child Care Licensing. Therefore, any other unexpected costs or savings are inestimable.

B) Local governments:

This proposed new rule is not expected to have any fiscal impact on local governments' revenues or expenditures because commercial preschools are already running as a business and should have already paid the individual cities for their business license and other related costs to run their business officially.

C) Small businesses ("small business" means a business employing 1-49 persons):

Commercial preschools operate as small business. There are 27 facilities in the industry in question (NAICS 624410) in Utah that will require this license type. Each of these small businesses are expected to experience an initial approximate direct fiscal cost of \$448 (\$200 initial application fee, \$62 licensing fee, \$1.75 per child fee for 15 children, \$53.25 background check costs for 3 individuals) related to their initial licensing process and an ongoing annual fiscal cost of \$88.25 (\$62 licensing fee, \$1.75 per child fee for 15 children) related to their renewal process. There are other facilities this new rule may affect; however, they are not registered with the NAICS. Therefore, any other unexpected costs or savings are inestimable.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

According to the NAICS 624410, there was only one of this facility type which will require a commercial preschool license. However, the number of employees listed is for the entire business and not for the preschool area. Therefore, they are expected to experience an initial approximate direct fiscal cost of \$448 (\$200 initial application fee, \$62 licensing fee, \$1.75 per child fee for 15 children, \$53.25 background check costs for 3 individuals working in the preschool area) related to their initial licensing process and an ongoing annual fiscal cost of \$88.25 (\$62 licensing fee, \$1.75 per child fee for 15 children) related to their renewal process. There are other facilities this new rule may affect; however, they are not registered with the NAICS. Therefore, any other unexpected costs or savings are inestimable.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The Child Care Center Licensing Committee does not anticipate any additional costs or savings to persons other than small businesses, non-small businesses, state, or local entities due to the proposed new rule because the new rule only affects small businesses and creates the

costs or savings previously explained and not related to these groups.

F) Compliance costs for affected persons:

There will be two main costs associated with this new rule for affected persons. An initial approximate direct fiscal cost of \$448 (\$200 initial application fee, \$62 licensing fee, \$1.75 per child fee for 15 children, \$53.25 background check costs for 3 individuals working in the preschool area) related to their initial licensing process and an ongoing annual fiscal cost of \$88.25 (\$62 licensing fee, \$1.75 per child fee for 15 children) related to their renewal process.

The calculation of approximately 15 children and 3 individuals is based on the most common practice in these facilities. These costs may change depending on variations to these two numbers.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$12,096	\$2,383	\$2,383
Non-Small Businesses	\$448	\$88.25	\$88.25
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$12,544	\$2,471.25	\$2,471.25
Fiscal Benefits			
State Government	\$12,096	\$2,471	\$2,471
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$12,096	\$2,471	\$2,471
Net Fiscal Benefits	\$12,096	\$2,471	\$2,471

H) Department head approval of regulatory impact analysis:	
The Interim Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.	
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:	
Business will experience a minimum fiscal impact due to the cost of licensing fees and background check requirements.	
B) Name and title of department head commenting on the fiscal impacts:	
Richard G. Saunders, Interim Executive Director	

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Subsection		
26-39-203(1)(a)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	02/01/2021

10. This rule change MAY become effective on:	02/08/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Richard G. Saunders Interim Executive Director	Date:	12/03/2020
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R381. Health, Child Care Center Licensing Committee.

R381-40. Commercial Preschool Programs.

R381-40-1. Legal Authority and Purpose.

- (1) This rule is enacted and enforced in accordance with Title 26, Chapter 39, Utah Child Care Licensing Act.
- (2) This rule establishes the foundational standards necessary to protect the health and safety of children in commercial preschool programs and defines the general procedures and requirements to get and maintain a license to provide this type of child care.

R381-40-2. Definitions.

- (1) "Applicant" means a person or business who has applied for a new or a renewal of a license from Child Care Licensing.
- (2) "Background Finding" means information in a background check that may result in a denial from Child Care Licensing.
- (3) "Background Check Denial" means that an individual has failed the background check and is prohibited from being involved with a child care program.
- (4) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.
- (5) "Body Fluid" means blood, urine, feces, vomit, mucus, or saliva.
- (6) "Business Days and Hours" means the days of the week and times the facility is open for business.
- (7) "Capacity" means the maximum number of children for whom care can be provided at any given time.
- (8) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.
- (9) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.
- (10) "Child Care" means continuous care and supervision of five or more qualifying children that is:
 - (a) in place of care ordinarily provided by a parent in the parent's home;
 - (b) for less than 24 hours a day; and
 - (c) for direct or indirect compensation.
- (11) "Child Care Center Licensing Committee" means the Child Care Center Licensing Committee created in the Utah Child Care Licensing Act.
- (12) "Child Care Program" means a person or business that offers child care.
- (13) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inches and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.
- (14) "Conditional Status" means that the provider is at risk of losing their child care license because compliance with any part of Rule R381-40 has not been maintained.
- (15) "Covered Individual" means any of the following individuals involved with a child care program:
 - (a) an owner;
 - (b) a director;
 - (c) a member of the governing body;
 - (d) an employee;
 - (e) a caregiver;
 - (f) a volunteer, except a parent of a child enrolled in the child care program;

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(g) an individual age 12 years old or older who resides in the facility; and

(h) anyone who has unsupervised contact with a child in care.

(16) "Department" means the Utah Department of Health.

(17) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least two by two inches in size and having an angle less than 30 degrees from horizontal.

(18) "Director" means an individual who meets the director qualifications under Section R381-40-7, and who assumes the child care program's day-to-day responsibilities under Rule R381-40.

(19) "Early Childhood Education" means a program of study that prepares an individual for the teaching of children in their early years, normally from birth up to the age of eight years old.

(20) "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, or using inappropriate physical restraint.

(21) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than nine inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(22) "Facility" means a child care program or the premises approved by the department to be used for child care.

(23) "Group" means the children who are assigned to and supervised by one or more caregivers.

(24) "Guest" means an individual who is not a covered individual and is at the child care facility for a short time with the provider's permission.

(25) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence.

(26) "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located at least 36 inches above the floor; or

(e) if in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

(27) "Infectious Disease" means an illness that is capable of being spread from one individual to another.

(28) "Involved with Child Care" means to do any of the following at or for a child care program:

(a) care for or supervise children;

(b) volunteer;

(c) own, operate, direct;

(d) reside;

(e) count in the caregiver-to-child ratio; or

(f) have unsupervised contact with a child in care.

(29) "License" means a license issued by the department to provide child care services.

(30) "Licensee" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(31) "LIS Supported Finding" means background check information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(32) "Over-the-Counter Medication" means medication that can be bought without a written prescription, including herbal remedies, vitamins, and mineral supplements.

(33) "Parent" means the parent or legal guardian of a child in care.

(34) "Person" means an individual or a business entity.

(35) "Physical Abuse" means causing nonaccidental physical harm to a child.

(36) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one child to stand on, and upon which the children can move freely.

(37) "Preschooler" means a child age two through four years old.

(38) "Protective Barrier" means a structure such as bars, lattice, or a panel that is around an elevated platform and is intended to prevent accidental or deliberate movement through or access to something.

(39) "Protective Cushioning" means a shock-absorbing surface under and around play equipment that reduces the severity of injuries from falls.

(40) "Provider" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(41) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of an individual other than the child care provider or caregiver;

(b) a child with a disability who is younger than 18 years old and is the child of an individual other than the provider or caregiver; or

(c) a child who is younger than four years old and is the child of the provider or a caregiver.

(42) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(43) "Room" is defined by the department as follows:

(a) If a large room is divided into smaller rooms or areas with barriers such as furniture or with half walls, the room or area is considered:

(i) one room, if the room is divided by a solid barrier that is less than 24 inches, whether the barrier is movable or immovable;

(ii) one room, if the room is divided by a solid barrier that is between 24 and 40 inches in height and there is an opening in the barrier through which caregivers and children can move freely;

(iii) two rooms, if the room is divided by a solid barrier that is between 24 and 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked such as with a child safety gate. This also applies to a diaper changing station that is located behind a closed gate; or

(iv) two rooms, if the room is divided by a solid barrier that is over 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked such as with a child safety gate. If there is an opening through which caregivers and children can move freely and the opening is not blocked, refer to the instructions for a large opening, archway, or doorway.

(b) If two rooms or areas are connected by a large opening, archway, or doorway, the rooms or areas are considered:

(i) one room, if the width of the opening or archway is equal to or greater than the combined width of the walls on each side of the opening or archway, in the larger of the two rooms or areas, and there is no furniture or other dividers blocking the opening or archway. Otherwise the department shall consider this to be two rooms; or

(ii) two rooms, if the width of the opening or archway is smaller than the combined width of the walls on each side of the opening or archway, in the larger of the two rooms or areas.

(c) If in outdoor areas separated by interior fences, areas are considered:

(i) one area, if the interior fence is 24 inches in height or lower, whether or not the fence has an opening;

(ii) one area, if the interior fence is 40 inches or lower in height with an opening through which caregivers and children can move freely;

(iii) two areas if the interior fence is higher than 24 inches and there is no opening; or

(iv) two areas, if the interior fence is higher than 40 inches whether or not the fence has an opening.

(44) "Sanitize" means to use a product or process to reduce contaminants and bacteria to a safe level.

(45) "Sexual Abuse" means to take indecent liberties with a child with the intention to arouse or gratify the sexual desire of an individual or to cause pain or discomfort.

(46) "Sexually Explicit Material" means any depiction of actual or simulated sexually explicit conduct.

(47) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

(48) "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

(49) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than two threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as a protruding open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(50) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and has passed a Child Care Licensing background check.

(51) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(52) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

(53) "Working Days" means the days of the week the department is open for business.

R381-40-3. License Required.

(1) A person shall have a preschool program license if they provide care:

(a) in the absence of the child's parent;

(b) in a place other than the provider's home or the child's home;

(c) for five or more qualifying children between the ages of two and four years old, and five years old if the child is not attending school;

(d) for each individual child for less than four hours per day;

(e) on an ongoing basis for more than two days a week and for four or more weeks in a year;

(f) for direct or indirect compensation; and

(g) where care does not include preparing meals to children.

(2) A person who is not required to be licensed may voluntarily receive a license, except for care that is for related children only or on a sporadic basis.

(3) A provider may be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program, if the part of the building requesting a CCL license is physically separated from the other building services.

R381-40-4. License Application, Renewal, Changes, and Variances.

(1) Each applicant for a new child care license shall:

(a) submit an online application;

(b) submit a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) submit a copy of a current local business license or a statement from the city that a business license is not required;

(d) have a copy of the educational credentials of the individual who will be the director as required in Section R381-40-7, ready for review by the department;

(e) complete CCL background checks for covered individuals as required in Section R381-40-8;

(f) complete CCL new provider training no more than six months before becoming licensed; and

(g) pay any required fees, which are nonrefundable.

(2) Each applicant shall pass a department's inspection of the facility before a new or a renewal license is issued.

(3) If the local fire authority states that an applicant for a new or a renewal license does not require a fire inspection, the department shall verify the applicant's compliance with the following:

(a) address numbers and letters are readable from the street;

(b) exit doors operate properly and are well maintained;

(c) there are no obstructions in exits, aisles, corridors, and stairways;

(d) exit doors are unlocked from the inside during business hours;

(e) exits are clearly identified;

(f) there is at least one unobstructed fire extinguisher on each level of the building, currently charged and serviced, and mounted not more than five feet above the floor;

(g) there are working smoke detectors that are properly installed on each level of the building; and

(h) boiler, mechanical, and electrical panel rooms are not used for storage.

(4) If an applicant for a new or a renewal license serves food and the local health department states that a kitchen inspection is not required, the department shall verify the applicant's compliance with the following:

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(a) the refrigerator is clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there is a working thermometer in the refrigerator;

(c) reusable food holders, utensils, and food preparation surfaces are washed, rinsed, and sanitized before each use;

(d) chemicals are stored away from food and food service items;

(e) food is properly stored, kept to the proper temperature, and in good condition; and

(f) there is a working handwashing sink in the kitchen and handwashing instructions posted by the sink.

(5) Each applicant for a new license shall have six months from the time any portion of the application is submitted to finish the licensing process. If unsuccessful, the applicant shall reapply. Any resubmission must include the required documentation, payment of licensing fees, and a new inspection of the facility in order to be licensed.

(6) The department may deny an application for a new or renewal license if, within the five years preceding the application date, the applicant held a license or a certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;

(d) voluntarily closed after an the department found a violation to any rule under Rule R381-40 that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the department.

(7) Each child care license expires at midnight on the last day of the month shown on the license, unless the license was previously revoked by the department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current license expires, each provider shall submit for renewal:

(a) an online renewal request;

(b) applicable renewal fees;

(c) any previous unpaid fees; and

(d) a copy of a current fire inspection report.

(9) The department may grant a provider who fails to renew their license by the expiration date an additional 30 days to complete the renewal process if the provider pays a late fee.

(10) The department may deny renewal of a license for a provider who is no longer caring for children.

(11) Each provider shall submit a complete application for a new license at least 30 days before any of the following changes occur:

(a) a change of the child care facility's location; or

(b) a change that transfers 50 percent or more ownership or controlling interest to a new individual or entity.

(12) A provider shall submit a complete online changes request to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where child care is provided;

(b) a change in the name of the program;

(c) a change in the regulation type of the program;

(d) a change in the name of the provider;

(e) an addition or loss of a director; or

(f) a change in ownership that does not require a new license.

(13) The department may amend a license after verifying that the applicant is in compliance with each applicable rule under Rule R381-40 and required fees have been paid. The expiration date of the amended license remains the same as the previous license.

(14) Only the department may assign, transfer, or amend a license.

(15) If an applicant or provider cannot comply with a rule under Rule R381-40 but can meet the intent of the rule in another way, the applicant or provider may apply for a variance to that rule by submitting a request to the department.

(16) The department may:

(a) require additional information before acting on the variance request; and

(b) impose health and safety requirements as a condition of granting a variance.

(17) Each provider shall comply with the existing Rule R381-40 rules until a variance is approved by the department.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the department.

(19) The department may grant variances for up to 12 months.

(20) The department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R381-40-5. Rule Violations, Penalties, and Appeals.

(1) The department may place a program's child care license on a conditional status for the following causes:

(a) chronic, ongoing noncompliance with the requirements under Rule R381-40;

(b) unpaid fees; or

(c) a serious rule violation that places children's health or safety in immediate jeopardy.

(2) The department shall establish the length of the conditional status and set the conditions that the child care provider shall satisfy to remove the conditional status.

(3) The department may increase monitoring of the program that is on conditional status to verify compliance with the rules under Rule R381-40.

(4) The department may deny or revoke a license if the child care provider:

(a) fails to meet the conditions of a license on conditional status;

(b) violates the Child Care Licensing Act;

(c) provides false or misleading information to the department;

(d) misrepresents information by intentionally altering a license or any other document issued by the department;

(e) fails to allow authorized representatives of the department access to the facility to ensure compliance with the requirements under Rule R381-40;

(f) fails to submit or make available to the department any written documentation needed to verify compliance with the requirements under Rule R381-40;

(g) commits a serious rule violation that results in death or serious harm to a child, or that places a child at risk of death or serious harm; or

(h) has committed an illegal act that would exclude an individual from having a license.

(5) Within ten working days of receipt of a revocation notice, the provider shall submit to the department the names and mailing addresses of the parents of each enrolled child so the department can notify the parents of the revocation.

(6) The department may order the immediate closure of a facility if conditions create a clear and present danger to any child in care and may require immediate action to protect the children's health or safety.

(7) Upon receipt of an immediate closure notice, the provider shall give the department the names and mailing addresses of the parents of each enrolled child so the department can notify the parents of the immediate closure.

(8) If there is a severe injury or the death of a child in care, the department may order a child care provider to suspend services and prohibit new enrollments, pending a review by the Child Fatality Review Committee or a determination of the probable cause of death or injury by a medical professional.

(9) If a person is providing care for more than four unrelated children without the appropriate license, the department may:

(a) issue a cease and desist order; or

(b) allow the person to continue operation if:

(i) the person was unaware of the need for a license;

(ii) conditions do not create a clear and present danger to the children in care; and

(iii) the person agrees to apply for the appropriate license within 30 calendar days of notification by the department.

(10) If a person providing care without the appropriate license agrees to apply for a license but does not submit an application and the required application documents within 30 days, the department may issue a cease and desist order.

(11) A violation of any of the requirements under Rule R381-40 is punishable by an administrative civil money penalty of up to \$5,000 a day as provided in Section 26-39-601.

(12) The department may assess a civil money penalty and also take action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license.

(13) The department may deny an application or revoke a license for failure to pay any required fees, including fees for applications, late fees, returned checks, license changes, additional inspections, conditional monitoring inspections, background checks, civil money penalties, and other fees assessed by the department.

(14) An applicant or provider may appeal any department decision within 15 working days of being informed in writing of the decision.

R381-40-6. Administration and Children's Records.

(1) The provider shall:

(a) be at least 21 years old;

(b) pass a CCL background check; and

(c) complete the new provider training offered by the department.

(2) If the owner is not a sole proprietor, the business entity shall submit to the department the name(s) and contact information of the individual(s) who shall legally represent them and who shall comply with the requirements under Subsection R381-40-6(1).

(3) The provider shall protect children from conduct that endangers children in care, or is contrary to the health, morals, welfare, and safety of the public.

(4) The provider shall know and comply with each applicable federal, state, and local law, ordinance, and rule, and shall be responsible for the operation and management of a child care program.

(5) The provider shall comply with the requirements under Rule R381-40 any time a child in care is present.

(6) The provider shall post their unaltered child care license on the facility premises in a place readily visible and accessible to the public.

(7) The provider shall post a current copy of the department's Parent Guide at the facility for parent review during business hours.

(8) The provider shall inform parents and the department of any changes to the program's telephone number and other contact information within 48 hours of the change.

(9) The provider shall:

(a) have liability insurance; or

(b) inform parents in writing that the provider does not have liability insurance.

(10) The provider shall ensure that a parent completes an admission and health assessment form for their child before the child is admitted into the child care program.

(11) The provider shall ensure that each child's admission and health assessment form includes the following information:

(a) child's name;

(b) child's date of birth;

(c) parent's name, address, and phone number, including a daytime phone number;

(d) names of individuals authorized by the parent to sign the child out from the facility;

(e) name, address, and phone number of an individual to be contacted if an emergency happens and the provider cannot contact the parent;

(f) if available, the name, address, and phone number of an out-of-area emergency contact individual for the child;

(g) parent's permission for emergency transportation and emergency medical treatment;

(h) any known allergies of the child;

(i) any known food sensitivities of the child;

(j) any chronic medical conditions that the child may have;

(k) instructions for special or nonroutine daily health care of the child;

(l) current ongoing medications that the child may be taking;

(m) any other special health instructions for the caregiver; and

(n) certification that required immunizations are current.

(12) The provider shall ensure that the admission and health assessment form is:

(a) reviewed, updated, and signed or initialed by the parent at least annually; and

(b) kept on-site for review by the department.

(13) The provider shall ensure that each child's information is kept confidential and not released without written parental permission except to the department.

R381-40-7. Personnel and Training Requirements.

(1) The provider shall ensure that employees and volunteers are supervised, qualified, and trained as stated under Rule R381-40 to:

- (a) meet the needs of the children; and
- (b) comply with each requirement.

(2) The provider shall ensure that the preschool program has a qualified director as required under Section R381-40-7.

(3) The provider shall ensure that the director:

- (a) is at least 21 years old;
- (b) passes a CCL background check;

(c) receives at least 2-1/2 hours of preservice training before beginning job duties;

(d) completes the new director training offered by the department within 60 working days of assuming director duties;

(e) knows and follows any applicable laws and requirements under Rule R381-40; and

(f) completes at least 10 hours of child care training each year based on the facility's license date, or at least 45 minutes of child care training each month they work if hired partway through the facility's licensing year.

(4) The provider shall ensure that new directors have one of the following educational credentials:

(a) any bachelor's or higher education degree;

(b) at least 60 clock hours of approved Utah Early Childhood Career Ladder courses in child development, social/emotional development, and the child care environment; or 60 clock hours of equivalent training as approved by the department;

(c) at least 12 college credit hours of child development courses;

(d) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other equivalent credential as approved by the department;

(e) at least a Level 9 from the Utah Early Childhood Career Ladder system;

(f) a National Administrator Credential (NAC) and at least 60 clock hours of approved Utah Early Childhood Career Ladder courses in child development, social and emotional development, and the child care environment; or 60 clock hours of equivalent training as approved by the department; or

(g) proof of at least five years of early education teaching experience.

(5) The provider shall ensure that the director is on duty at the facility for at least half of the time every week the program is open.

(6) The provider shall ensure that there is a director designee with authority to act on behalf of the director in the director's absence.

(7) The provider shall ensure that the director designee:

- (a) is at least 21 years old;
- (b) passes a CCL background check;

(c) receives at least 2-1/2 hours of preservice training before beginning job duties;

(d) knows and follows any applicable laws and requirements under Rule R381-40; and

(e) completes at least 10 hours of child care training each year based on the facility's license date, or at least 45 minutes of child care training each month they work if hired partway through the facility's licensing year.

(8) The provider shall ensure that the director or the director designee is present at the facility when the program is open for care.

(9) The provider shall ensure that caregivers:

- (a) are at least 16 years old;
- (b) pass a CCL background check;

(c) receive at least 2-1/2 hours of preservice training before caring for children;

(d) know and follow any applicable laws and requirements under Rule R381-40;

(e) complete at least 10 hours of child care training each year, based on the facility's license date, or at least 45 minutes of child care training each month they work if hired partway through the facility's licensing year; and

(f) do not have unsupervised contact with any child in care, including during offsite activities and transportation, if the caregivers are younger than 18 years old.

(10) The provider shall ensure that any other employees such as drivers, cooks, and clerks:

(a) pass a CCL background check;

(b) receive at least 2-1/2 hours of preservice training before beginning job duties;

(c) know and follow any applicable laws and requirements under Rule R381-40, and

(d) do not have unsupervised contact with any child in care, including during offsite activities and transportation, if the employee is younger than 18 years old.

(11) The provider shall ensure that volunteers:

(a) pass a CCL background check; and

(b) do not have unsupervised contact with any child in care, including during offsite activities and transportation, if the volunteer is younger than 18 years old.

(12) The provider shall ensure that guests:

(a) do not have unsupervised contact with any child in care, including during offsite activities and transportation; and

(b) wear a guest nametag.

(13) The provider shall ensure that student interns who are registered and participating in a high school or college child care course:

(a) do not have unsupervised contact with any child in care, including during offsite activities and transportation; and

(b) wear a guest nametag.

(14) The provider shall ensure that parents of children in care do not have unsupervised contact with any child in care, except with their own children.

(15) The provider shall ensure that household members who are:

(a) 12 to 17 years old pass a CCL background check and do not have unsupervised contact with any child in care, including during offsite activities and transportation; and

(b) 18 years old or older pass a CCL background check that includes fingerprints.

(16) The provider shall ensure that individuals who provide Individualized Educational Plan (IEP) or Individualized Family Service plan (IFSP) services such as physical, occupational, or speech therapists:

(a) provide proper identification before having access to the facility or to a child at the facility; and

(b) have received the child's parent's permission for services to take place at the facility.

(17) The provider shall ensure that individuals from law enforcement, Child Protective Services, the department, and any

similar entities provide proper identification before having access to the facility or to a child at the facility.

(18) The provider shall ensure that preservice training includes at least the following topics:

(a) job description and duties;
(b) current department rule Sections R381-40-7 through R381-40-22;

(c) disaster preparedness, response, and recovery;

(d) pediatric first aid and cardio pulmonary resuscitation (CPR);

(e) children with special needs;

(f) safe handling and disposal of hazardous materials;

(g) prevention, signs, and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(h) principles of child growth and development, including brain development;

(i) recognizing the signs of homelessness and available assistance;

(j) a review of the information in each child's health assessment in the caregiver's assigned group, including allergies, food sensitivities, and other special needs; and

(k) an introduction and orientation to the children in care.

(19) The provider shall keep documentation of each individual's preservice training on-site for review by the department and shall ensure that documentation includes at least the following:

(a) training topics;

(b) date of the training; and

(c) total hours or minutes of training.

(20) The provider shall ensure that annual child care training includes at least the following topics:

(a) current department rule Sections R381-40-7 through R381-40-22;

(b) disaster preparedness, response, and recovery;

(c) pediatric first aid and CPR;

(d) children with special needs;

(e) safe handling and disposal of hazardous materials;

(f) the prevention, signs, and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(g) principles of child growth and development, including brain development; and

(h) recognizing the signs of homelessness and available assistance.

(21) The provider shall ensure that documentation of each individual's annual child care training is kept on-site for review by the department and includes the following:

(a) training topic;

(b) date of the training;

(c) name of the individual or organization that presented the training; and

(d) total hours or minutes of training.

(22) When there are children at the facility, the provider shall ensure that there is at least one staff member present who can demonstrate English literacy skills needed to care for children and respond to emergencies.

(23) The provider shall ensure that at least one staff member with a current Red Cross, American Heart Association, or equivalent pediatric first aid and CPR certification is present when children are in care:

(a) at the facility;

(b) in each vehicle transporting children; and

(c) at each offsite activity.

(24) The provider shall ensure that CPR certification includes hands-on testing.

(25) The provider shall ensure that the following records for each covered individual are kept on-site for review by the department:

(a) the date of initial employment or association with the program;

(b) a current pediatric first aid and CPR certification, if required under Rule R381-40; and

(c) a six-week record of the times worked each day.

R381-40-8. Background Checks.

(1) Before a new covered individual becomes involved with child care in the program, the provider shall use the CCL provider portal search to:

(a) verify that the individual has a current CCL background check; and

(b) associate that individual with their facility if the covered individual appears in the search.

(2) Before a new covered individual who does not appear in the CCL provider portal search becomes involved with child care in the program, the provider shall:

(a) have the individual submit an online background check form and fingerprints;

(b) authorize the individual's background check through the CCL provider's portal;

(c) pay any required fees; and

(d) receive written notice from CCL that the individual passed the background check.

(3) The department may include a covered individual by name on the CCL provider portal and consider that covered individual's background check to be current if the covered individual has:

(a) passed a CCL background check;

(b) resided in Utah since the last background check was completed; and

(c) been associated with an active, CCL approved child care facility within the past 180 days.

(4) Within ten working days from when a child who resides in the facility turns 12 years old, the provider shall:

(a) ensure that an online background check form is submitted;

(b) authorize the child's background check through the CCL provider's portal; and

(c) pay any required fees.

(5) The provider shall ensure that fingerprints are prepared by a local law enforcement agency or an agency approved by local law enforcement.

(6) If fingerprints are submitted electronically through live scan, the provider shall ensure that the agency taking the fingerprints is one that follows the department's guidelines.

(7) The department may deny a covered individual from being involved with child care for any of the following background findings:

(a) LIS supported findings;

(b) the covered individual's name appears on the Utah or national sex offender registry;

(c) any felony convictions; or

(d) for any of the reasons listed under Subsection R381-40-8(8).

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(8) The department may also deny a covered individual from being involved with child care for any of the following convictions regardless of severity:

- (a) unlawful sale or furnishing alcohol to minors;
- (b) sexual enticing of a minor;
- (c) cruelty to animals, including dogfighting;
- (d) bestiality;
- (e) lewdness, including lewdness involving a child;
- (f) voyeurism;
- (g) providing dangerous weapons to a minor;
- (h) a parent providing a firearm to a violent minor;
- (i) a parent knowing of a minor's possession of a dangerous weapon;
- (j) sales of firearms to juveniles;
- (k) pornographic material or performance;
- (l) sexual solicitation;
- (m) prostitution and related crimes;
- (n) contributing to the delinquency of a minor;
- (o) any crime against an individual;
- (p) a sexual exploitation act;
- (q) leaving a child unattended in a vehicle; and
- (r) driving under the influence (DUI) while a child is present in the vehicle.

(9) The department shall approve a covered individual if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred ten or more years before the CCL background check was conducted.

(10) If the provider fails to pass a background check, the department may suspend or deny their license until the reason for the denial is resolved.

(11) If a covered individual fails to pass a CCL background check, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

(12) If a covered individual is denied a license or employment based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information to the Department of Public Safety.

(13) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS), the covered individual may appeal the finding to the Department of Human Services.

(14) The provider and the covered individual shall notify the department within 48 hours of becoming aware of the covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding. Failure to notify the department within 48 hours may result in disciplinary action, including revocation of the license.

(15) The Executive Director of the Department of Health may overturn a background check denial if the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R381-40-9. Facility.

(1) The provider shall ensure that any building or play structure on the premises constructed before 1978 that has peeling, flaking, chalking, or failing paint is tested for lead. If lead-based paint is found, the provider shall contact their local health department

within five working days and follow required procedures for remediation of the lead hazard.

(2) The provider shall ensure that each room and indoor area that is used by children is ventilated by mechanical ventilation, or by windows that open and have screens.

(3) The provider shall ensure that windows and glass doors within 36 inches from the floor or ground are made of safety or tempered glass, or have a protective guard.

(4) The provider shall ensure that rooms and areas have adequate light intensity for the safety of the children and the type of activity being conducted.

(5) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(6) The provider shall ensure that there is a working telephone at the facility, in each vehicle while transporting children, and during offsite activities.

(7) The provider shall ensure that there is at least one working toilet and one working sink when there are up to 15 children in the facility, and at least two working toilets and two working sinks when there are more than 15 children present in the facility.

(8) If there is an outdoor area in the facility, the provider shall ensure that the outdoor area:

- (a) is safely accessible to the children;
- (b) is enclosed within a fence, wall, or solid natural barrier that is at least four feet high; and
- (c) has no gaps five by five inches or greater in or under the fence or barrier.

(9) If there is a swimming pool on the premises that is not emptied after each use, the provider shall:

- (a) meet applicable state and local laws and ordinances related to the operation of a swimming pool;
- (b) maintain the pool in a safe manner; and
- (c) when not in use, cover the pool with a commercially-made safety enclosure that is installed according to the manufacturer's instructions, or enclose the pool within at least a four-foot-high fence or solid barrier that is kept locked and that separates the pool from any other areas on the premises.

(10) The provider shall maintain buildings and outdoor areas in good repair and safe condition including:

- (a) ceilings, walls, and floor coverings;
- (b) lighting, bathroom, and other fixtures;
- (c) draperies, blinds, and other window coverings;
- (d) indoor and outdoor play equipment;
- (e) furniture, toys, and materials accessible to the children; and
- (f) entrances, exits, steps, and walkways including keeping them free of ice, snow, and other hazards.

(11) The provider shall ensure that accessible raised decks or balconies that are five feet or higher, and open stairwells that are five feet or deeper have protective barriers that are at least three feet high.

(12) If the facility is subdivided, any part of the building is rented out, or any area of the facility is shared including the outdoor area, the department may inspect the entire facility and the provider shall ensure that covered individuals in the facility comply with the requirements under Rule R381-40, except when the following conditions are met:

- (a) there is a separate entrance for the child care program;
- (b) there are no connecting interior doorways that can be used by unauthorized individuals; and
- (c) there is no shared access to the outdoor area used for child care.

R381-40-10. Capacity and Ratio.

(1) The department may limit the maximum allowed capacity for a child care facility based on local ordinances.

(2) The provider shall ensure that the number of children in care at any given time does not exceed the capacity identified on the license.

(3) The department may determine the total capacity based on the number of rooms and the ages of children cared for in those rooms.

(4) As listed in Table 1 for single-age groups of children, the provider shall:

(a) maintain at least the number of caregivers; and

(b) not exceed the number of children in the caregiver-to-child ratio per room.

TABLE 1
Caregiver-to-Child Ratios

Ages of Children	# of Caregivers	# of Children
2 years old	at least 1	7
3 years old	at least 1	12
4 years old	at least 1	15
5 years old	at least 1	20

(5) As listed in Tables 2-4 for mixed-age groups of children, the provider shall:

(a) maintain at least the number of caregivers, and

(b) not exceed the number of children in the caregiver-to-child ratio per room.

TABLE 2
Two-to-Five-Year-Olds

# Caregivers Required	Age	# Children in the room
At least 1	2 years	1-6
	3, 4, and 5 years	1-10
Maximum Total children in the room:		11

TABLE 3
Three-to-Five-Year-Olds

# Caregivers Required	Age	# Children in the room
At least 1	3 years	1-11
	4 years	1-14
	5 years	1-14
Maximum Total children in the room:		16

TABLE 4
Four-to-Five-Year-Olds

# Caregivers Required	Age	# Children in the room
At least 1	4 years	1-14
	5 years	1-17
Maximum Total children in the room:		18

(6) The provider may exclude the provider's or an employee's child age four years or older from the caregiver-to-child ratio when the parent of the child is working at the facility.

(7) The provider may include caregivers, student interns who are registered in a high school or college child care course, and volunteers who are 16 years old or older in the caregiver-to-child ratio.

R381-40-11. Child Supervision and Security.

(1) The provider shall ensure that caregivers provide and maintain active supervision of each child, including:

(a) the caregiver is physically present in the room or area with the children;

(b) caregivers know the number of children in their care at any time;

(c) caregivers' attention is focused on the children and not on caregivers' personal interests;

(d) caregivers are aware of the entire group of children even when interacting with a smaller group or an individual child; and

(e) caregivers position themselves so each child in their assigned group is actively supervised.

(2) The provider shall ensure that parents have access to their child and the areas used to care for their child when their child is in care.

(3) To maintain security and supervision of children, the provider shall ensure that:

(a) each child is signed in and out;

(b) only parents or persons with written authorization from the parent may sign out a child;

(c) photo identification is required if the individual signing the child in or out is unknown to the provider;

(d) persons signing children in and out use identifiers, such as a signature, initials, or electronic code; and

(e) the sign-in and sign-out records include the date and time each child arrives and leaves.

(4) In an emergency, the provider shall accept the parent's verbal authorization to release a child if the provider can confirm the identity of:

(a) the person giving verbal authorization; and

(b) the person picking up the child.

(5) The provider shall ensure that a six-week record of each child's daily attendance, including sign-in and sign-out records, is kept on-site for review by the department.

R381-40-12. Child Guidance and Interaction.

(1) The provider shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) The provider shall inform parents, children, and those who interact with the children of the program's behavioral expectations and how any misbehavior will be handled.

(3) The provider shall ensure that individuals who interact with the children guide children's behavior by using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(4) The provider shall ensure that caregivers use gentle, passive restraint with children only when it is needed to protect children from injuring themselves or others, or to stop them from destroying property.

(5) The provider shall ensure that interactions with the children do not include:

(a) any form of corporal punishment or any action that produces physical pain or discomfort such as hitting, spanking, shaking, biting, or pinching;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds gentle, passive restraint;

(c) shouting at children;

(d) any form of emotional abuse;

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(e) forcing or withholding food, rest, or toileting; or
(f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

(6) Any individual who witnesses or suspects that a child has been subjected to abuse, neglect, or exploitation shall immediately notify Child Protective Services or law enforcement as required in state law.

R381-40-13. Child Safety and Injury Prevention.

(1) The provider shall ensure that the building, outdoor area, toys, and equipment are used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) The provider shall ensure that poisonous and harmful plants are inaccessible to children.

(3) The provider shall ensure that sharp objects, edges, corners, or points that could cut or puncture skin are inaccessible to children.

(4) The provider shall ensure that choking hazards are inaccessible to children younger than three years old.

(5) The provider shall ensure that strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck are inaccessible to children.

(6) The provider shall ensure that tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways are inaccessible to children.

(7) The provider shall ensure that empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons are inaccessible to children younger than five years old.

(8) The provider shall ensure that standing water that measures two inches or deeper and five by five inches or greater in diameter is inaccessible to children.

(9) The provider shall ensure that toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable, corrosive, and reactive materials are:

- (a) inaccessible to children;
- (b) used according to manufacturer instructions;
- (c) stored in containers labeled with the contents of the container; and
- (d) disposed of properly.

(10) The provider shall ensure that the following items are inaccessible to children:

- (a) matches or cigarette lighters;
- (b) open flames;
- (c) hot wax or other hot substances; and
- (d) when in use, portable space heaters, wood burning stoves, and fireplaces.

(11) The provider shall ensure that the following items are inaccessible to children:

- (a) live electrical wires; and
- (b) for children younger than five years old, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(12) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, the provider shall ensure that firearms such as guns, muzzel loaders, rifles, shotguns, hand guns, pistols, and automatic guns are:

- (a) locked in a cabinet or area using a key, combination lock, or fingerprint lock; and
- (b) stored unloaded and separate from ammunition.

(13) The provider shall ensure that weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace are inaccessible to children.

(14) The provider shall ensure that alcohol, illegal substances, and sexually explicit material are inaccessible, and not used on the premises, during offsite activities, or in program vehicles any time a child is in care.

(15) If there is an outdoor area used by the children, the provider shall ensure that an outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain is available to each child when the outside temperature is 75 degrees or higher.

(16) The provider shall ensure that areas accessible to children are free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and standing ladders.

(17) The provider shall ensure that hot water accessible to children does not exceed 120 degrees Fahrenheit.

(18) The provider shall ensure that tobacco, e-cigarettes, e-juice, e-liquids, and similar products are inaccessible and, in compliance with the Utah Indoor Clean Air Act, not used:

- (a) in the facility or any other building when a child is in care;
- (b) in any vehicle that is being used to transport a child in care;
- (c) within 25 feet of any entrance to the facility or other building occupied by a child in care; or
- (d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

R381-40-14. Emergency Preparedness and Response.

(1) The provider shall have a written emergency preparedness, response, and recovery plan that:

- (a) includes procedures for evacuation, relocation, shelter in place, lockdown, communication with and reunification of families, and continuity of operations;
- (b) includes procedures for accommodations for children with disabilities, and children with chronic medical conditions;
- (c) is available for review by parents, staff, and the department during business hours; and
- (d) is followed if an emergency happens, unless otherwise instructed by emergency personnel.

(2) The provider shall post the facility's street address and emergency numbers, including at least fire, police, and poison control, near each telephone in the facility or in an area clearly visible to anyone needing the information.

(3) The provider shall keep first-aid supplies in the facility, including at least antiseptic, bandages, and tweezers.

(4) The provider shall conduct fire evacuation drills at least quarterly and make sure drills include a complete exit of each child, staff, and volunteers from the building.

(5) The provider shall conduct drills for disasters other than fires at least once every 6 months.

(6) The provider shall give parents a written report of every incident, accident, or injury involving their child.

(7) If a child is injured and the injury appears serious but not life-threatening, the provider shall contact the child's parent immediately.

(8) If a life-threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb happens, the provider shall:

- (a) call emergency personnel immediately;
- (b) contact the parent after emergency personnel are called; and

(c) if the parent cannot be reached, try to contact the child's emergency contact individual.

(9) If a child is injured while in care and receives medical attention, or for a child fatality, the provider shall:

(a) submit a completed accident report form to the department within the next business day of the incident; or

(b) contact the department within the next business day and submit a completed accident report form within five business days of the incident.

(10) The provider shall keep a six-week record of each incident, accident, and injury report on-site for review by the department.

R381-40-15. Health and Infection Control.

(1) The provider shall keep the building, furnishings, equipment, and outdoor area clean and sanitary including:

(a) walls and flooring free of spills, dirt, and grime;

(b) areas and equipment used for the storage, preparation, and service of food;

(c) surfaces free of rotting food or a build-up of food;

(d) the building and grounds free of a build-up of litter, trash, and garbage;

(e) frequently touched surfaces, including doorknobs and light switches; and

(f) the facility free of animal feces.

(2) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other pests.

(3) The provider shall ensure that fabric toys and items such as stuffed animals, cloth dolls, pillow covers, and dress-up clothes are machine washable and washed weekly, and as needed.

(4) The provider shall clean and sanitize any toys and materials used by children:

(a) at least once a week or more often if needed; and

(b) after being contaminated by a body fluid.

(5) The provider shall ensure that water play tables or tubs are cleaned and sanitized daily, if used by the children.

(6) The provider shall ensure that bathroom surfaces including toilets, sinks, faucets, and counters are cleaned and sanitized each day.

(7) The provider shall ensure that toilet paper is accessible to children and kept in a dispenser.

(8) The provider shall post handwashing procedures that are readily visible from each handwashing sink and shall ensure that the procedures are followed.

(9) The provider shall ensure that staff and volunteers wash their hands thoroughly with liquid soap and running water at required times including:

(a) upon arrival;

(b) after using the toilet or helping a child use the toilet;

(c) after contact with a body fluid;

(d) after cleaning up or taking out garbage;

(e) after diapering a child;

(f) before administering medications to children;

(d) before and after eating meals and snacks or feeding a child; and

(e) when coming in from outdoors.

(10) The provider shall ensure that caregivers teach children how to wash their hands thoroughly and oversee handwashing when possible.

(11) The provider shall ensure that children wash their hands thoroughly with liquid soap and running water at required times including:

(a) upon arrival;

(b) after using the toilet;

(c) after contact with a body fluid;

(d) before using a water play table or tub;

(e) before eating a snack; and

(f) when coming in from outdoors.

(12) The provider shall ensure that only single-use towels from a covered dispenser or an electric hand dryer is used to dry hands.

(13) The provider shall ensure that personal hygiene items, such as toothbrushes, combs, and hair accessories, are not be shared and are stored so they do not touch each other, or they are sanitized between each use.

(14) The provider shall ensure that a child's clothing is promptly changed if the child has a toileting accident.

(15) The provider shall ensure that children's clothing that is wet or soiled from a body fluid is:

(a) not rinsed or washed at the facility;

(b) placed in a leakproof container that is labeled with the child's name; and

(c) returned to the parent; or

(d) thrown away with parental consent.

(16) The provider shall ensure that staff take precautions when cleaning floors, furniture, and other surfaces contaminated by blood, urine, feces, or vomit. Except for toileting accidents, staff shall:

(a) wear waterproof gloves;

(b) clean the surface using a detergent solution;

(c) rinse the surface with clean water;

(d) sanitize the surface;

(e) throw away in a leakproof plastic bag the disposable materials, such as paper towels, that were used to clean up the body fluid;

(f) wash and sanitize any nondisposable materials used to clean up the body fluid, such as cleaning cloths, mops, or reusable rubber gloves, before reusing them; and

(g) wash their hands after cleaning up the body fluid.

(17) The provider shall ensure that a child who is ill with an infectious disease is not cared for at the facility except when the child shows signs of illness after arriving at the facility.

(18) If a child becomes ill while in care:

(a) the provider shall contact the child's parent or, if the parent cannot be reached, an individual listed as the emergency contact to immediately pick up the child; and

(b) if the child is ill with an infectious disease, the provider shall make the child comfortable in a safe, supervised area that is separated from the other children until the parent arrives.

(19) When any child or employee has an infectious disease, an unusual or serious illness, or a sudden onset of an illness, the provider shall notify the local health department on the day the illness is discovered.

(20) If a staff member or child has an infectious disease or parasite, the provider shall post a notice at the facility that:

(a) does not disclose any personal identifiable information;

(b) is posted in a conspicuous place where it can be seen by parents;

(c) is posted and dated on the same day that the disease or parasite is discovered; and

(d) remains posted for at least five days.

R381-40-16. Food and Nutrition.

(1) The provider shall ensure that each child is offered a snack when services are provided for three or more hours.

(2) The provider shall ensure that the person who serves snacks to children:

(a) is aware of the children in their assigned group who have food allergies or sensitivities, and

(b) ensures that the children are not served the snack to which they are allergic or sensitive.

(3) The provider shall ensure that food and drink brought in by parents for their child's use is:

(a) labeled with the child's name;

(b) refrigerated if needed; and

(c) consumed only by that child.

R381-40-17. Medications.

(1) The provider shall lock nonrefrigerated medications or store them at least 48 inches above the floor.

(2) The provider shall lock refrigerated medications or store them at least 36 inches above the floor and, if liquid, store them in a separate leakproof container.

(3) If parents supply any over-the-counter or prescription medications, the provider shall ensure those medications are:

(a) labeled with the child's full name;

(b) kept in the original or pharmacy container;

(c) have the original label; and

(d) have child-safety caps.

(4) The provider shall have a written medication permission form completed and signed by the parent before administering any medication supplied by the parent for their child.

(5) The provider shall ensure that the medication permission form includes at least:

(a) the name of the child;

(b) the name of the medication;

(c) written instructions for administration; and

(d) the parent signature and the date signed.

(6) The provider shall ensure that instructions for administering the medication include at least:

(a) the dosage;

(b) how the medication will be given;

(c) the times and dates to administer the medication; and

(d) the disease or condition being treated.

(7) If the provider supplies an over-the-counter medication for children's use, the provider shall ensure that the medication is not administered to any child without previous parental consent for each instance it is given. The provider shall ensure that the consent is:

(a) written; or

(b) verbal, if the date and time of the consent is documented and signed by the parent upon picking up their child.

(8) The provider shall ensure that the staff administering the medication:

(a) washes their hands;

(b) check the medication label to confirm the child's name if the parent supplied the medication;

(c) checks the medication label or the package to ensure that a child is not given a dosage larger than that recommended by the health care professional or manufacturer; and

(d) administers the medication.

(9) The provider shall ensure that immediately after administering a medication, the staff giving the medication records the following information:

(a) the date, time, and dosage of the medication given;

(b) any error in administering the medication or adverse reactions; and

(c) their signature or initials.

(10) The provider shall report to the parent a child's adverse reaction to a medication or error in administration the medication immediately upon recognizing the reaction or error, or after notifying emergency personnel if the reaction is life-threatening.

(11) The provider shall notify the parent before the time a medication needs to be given to a child if the provider chooses not to administer medication as instructed by the parent.

(12) The provider shall keep a six-week record of medication permission and administration forms on-site for review by the department.

R381-40-18. Activities.

(1) The provider shall offer daily activities that support each child's healthy physical, social, emotional, cognitive, and language development.

(2) The provider shall ensure that physical development activities include light, moderate, and vigorous physical activity for a daily total of at least 15 minutes for every 2 hours children spend in the program.

(3) The provider shall post a daily schedule that includes activities that support children's healthy development.

(4) The provider shall ensure that toys, materials, and equipment needed to support children's healthy development are available to the children.

(5) Except for occasional special events, the provider shall ensure that the children's primary screen time activity on media such as television, cell phones, tablets, and computers is limited to 30 minutes per day, or 2-1/2 hours per week.

(6) If swimming activities are offered or if wading pools are used, the provider shall ensure that:

(a) the parent gives permission before their child in care uses the pool;

(b) caregivers stay at the pool supervising when a child is in the pool or has access to the pool, and when an accessible pool has water in it;

(c) diapered children wear swim diapers when they are in the pool;

(d) wading pools are emptied and sanitized after use by each group of children;

(e) if the pool is over four feet deep, there is a lifeguard on duty who is certified by the Red Cross or other approved certification program any time children have access to the pool; and

(f) lifeguards and pool personnel do not count toward the caregiver-to-child ratio.

(7) If offsite activities are offered, the provider shall ensure that:

(a) the parent gives written consent before each activity;

(b) the required caregiver-to-child ratio and supervision are maintained during the entire activity;

(c) first aid supplies, including at least antiseptic, bandages, and tweezers are available;

(d) children wear or carry with them the name and phone number of the program;

- (e) children's names are not used on nametags, t-shirts, or in other visible ways; and
- (f) there is a way for caregivers and children to wash their hands with soap and water, or with wet wipes and hand sanitizer if there is no source of running water.
- (8) The provider shall ensure that caregivers take the written emergency information and releases for each child in the group on any offsite activity, and that the information includes:
 - (a) the child's name;
 - (b) the parent's name and phone number;
 - (c) the name and phone number of a person to notify in case of an emergency if the parent cannot be contacted;
 - (d) the names of people authorized by the parents to pick up the child; and
 - (e) current emergency medical treatment and emergency medical transportation releases.

R381-40-19. Play Equipment.

- (1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.
- (2) The provider shall ensure that stationary play equipment has a surrounding use zone that extends from the outermost edge of the equipment, and with the exception of swings, that stationary play equipment has at least a six-foot use zone if any designated play surface is higher than 20 inches.
- (3) The provider shall ensure that the use zone in the front and rear of a single-axis, enclosed swing extends at least twice the distance of the swing pivot point to the swing seat.
- (4) The provider shall ensure that the use zone in the front and rear of a single-axis swing extends at least twice the distance of the swing pivot point to the ground.
- (5) The provider shall ensure that the use zone for a multi-axis swing, such as a tire swing, extends at least the measurement of the suspending rope or chain plus six feet.
- (6) The provider shall ensure that the use zone for a merry-go-round extends at least six feet in all directions from its outermost edge.
- (7) The provider shall ensure that the use zone for a spring rocker extends at least six feet from the outermost edge of the rocker when at rest if the seat is higher than 20 inches.
- (8) The provider shall ensure that the following use zones do not overlap the use zone of any other piece of play equipment:
 - (a) the use zone in front of a slide;
 - (b) the use zone in the front and rear of any single-axis swing, including a single-axis enclosed swing;
 - (c) the use zone of a multi-axis swing; and
 - (d) the use zone of a merry-go-round if the platform diameter measures 20 inches or more.
- (9) Unless prohibited under Subsection R381-40-19(8), the provider shall ensure that the use zones of play equipment only overlap when there is at least six feet between the pieces of equipment if the designated play surface is 30 inches or lower, or there is at least nine feet between the pieces of equipment if the designated play surface is higher than 30 inches.
- (10) The provider shall ensure that, when in use, stationary play equipment is not placed on a hard surface such as concrete, asphalt, dirt, or the bare floor.
- (11) The provider shall ensure that protective cushioning covers the entire surface of each required use zone and its depth or thickness is determined by the highest designated play surface of the equipment.

(12) If sand, gravel, or shredded tires are used as protective cushioning, the provider shall ensure that the depth of the material meets the guidelines in Table 5, and:

- (a) that the cushioning is periodically checked for compaction and loosened to the depth listed in Table 5 if compacted; and
- (b) if the material cannot be loosened due to extreme weather conditions, not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 5

Depths of Protective Cushioning Required for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine Sand		Medium Gravel		Shredded Tires
	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	
Up to 5' high	6"	6"	6"	6"	6"
Over 5' up to 6'	6"	9"	6"	9"	6"
Over 6' up to 9'	9"	not allowed	9"	not allowed	6"
Over 9' up to 10'	not allowed	not allowed	9"	not allowed	6"
Over 10' up to 12'	not allowed	not allowed	not allowed	not allowed	6"

(13) If shredded wood products are used as protective cushioning, the provider shall:

- (a) keep on-site for review by the department documentation from the manufacturer that the wood product is protective cushioning;
- (b) ensure there is adequate drainage under the material; and
- (c) ensure the depth of the shredded wood meets the guidelines in Table 6.

TABLE 6

Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood		Double Shredded	
	Engineered Wood Fibers	Wood Chips	Double Shredded Bark Mulch	Double Shredded Bark Mulch
Up to 6' high	6"	6"	6"	6"
Over 6' up to 7'	9"	6"	9"	9"
Over 7' up to 11'	9"	9"	9"	9"
Over 11'	9"	not allowed	not allowed	not allowed

(14) If a unitary cushioning is used, the provider shall maintain on-site for review by the department documentation from the manufacturer that the material is cushioning for playgrounds.

(15) If a unitary cushioning is used, the provider shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(16) the provider shall ensure that a play equipment platform that is more than 30 inches above the floor or ground has a protective barrier that is at least 29 inches high.

(17) The provider shall ensure that there is no gap greater than 3-1/2 inches in or under a required protective barrier on a play equipment platform.

(18) The provider shall ensure that stationary play equipment is stable or securely anchored.

(19) The provider shall ensure that there are no trampolines on the premises that are accessible to any child in care.

(20) The provider shall ensure that there are no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(21) The provider shall ensure that there are no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(22) The provider shall ensure that there are no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(23) The provider shall ensure that there are no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(24) For preschool programs operating before January 1, 2021 that need to make compliance modifications to existing play equipment, the department may facilitate a phase-in schedule for up to five years from the initial inspection.

R381-40-20. Transportation.

If transportation services are offered:

(1) For each child being transported, the provider shall have a transportation permission form:

(a) signed by the parent; and

(b) on-site for review by the department.

(2) The provider shall ensure that each vehicle used for transporting children:

(a) is enclosed with a roof or top;

(b) is equipped with safety restraints;

(c) has a current vehicle registration;

(d) is maintained in a safe and clean condition; and

(e) contains first aid supplies, including at least antiseptic, bandages, and tweezers.

(3) The provider shall ensure that the safety restraints in each vehicle that transports children are:

(a) appropriate for the age and size of each child who is transported, as required by Utah law;

(b) properly installed; and

(c) in safe condition and working order.

(4) The provider shall ensure that the driver of each vehicle who is transporting children:

(a) is at least 18 years old;

(b) has and carries with them a current, valid driver's license for the type of vehicle being driven;

(c) has with them the written emergency contact information for each child being transported;

(d) ensures that each child being transported is in an individual safety restraint that is used according to Utah law;

(e) ensures that the inside vehicle temperature is between 60-85 degrees Fahrenheit;

(f) never leaves a child in the vehicle unattended by an adult;

(g) ensures that children stay seated while the vehicle is moving;

(h) never leaves the keys in the ignition when not in the driver's seat; and

(i) ensures that the vehicle is locked during transport.

(5) If the provider walks or uses public transportation to transport children to or from the facility, the provider shall ensure that:

(a) each child being transported has a completed transportation permission form signed by their parent;

(b) a caregiver goes with the children and actively supervises the children;

(c) the caregiver-to-child ratio is maintained; and

(d) a caregiver with the children has written emergency contact information and releases for the children being transported.

R381-40-21. Animals.

(1) The provider shall inform parents of the kinds of animals allowed at the facility.

(2) The provider shall ensure that there is no animal on the premises that:

(a) is naturally aggressive;

(b) has a history of dangerous, attacking, or aggressive behavior; or

(c) has a history of biting even one individual.

(3) The provider shall ensure that animals at the facility are clean and free of obvious disease or health problems that could adversely affect children.

(4) The provider shall ensure that there is no animal or animal equipment in food preparation or eating areas.

(5) The provider shall ensure that children do not assist with the cleaning of animals or animal cages, pens, or equipment.

(6) The provider shall ensure that children and staff wash their hands immediately after playing with or touching reptiles and amphibians.

(7) The provider shall ensure that dogs, cats, and ferrets that are housed at the facility have current rabies vaccinations.

(8) The provider shall keep current animal vaccination records on-site for review by the department.

R381-40-22. Diapering.

If the provider accepts children who wear diapers:

(1) The provider shall post diapering procedures at each diapering station and ensure that they are followed.

(2) The provider shall ensure that each child's diaper is:

(a) checked at least once every two hours; and

(b) promptly changed when wet or soiled.

(3) The provider shall ensure that caregivers change children's diapers at a diapering station and not changed on surfaces used for any other purpose.

(4) The provider shall ensure that the diapering surface is smooth, waterproof, and in good repair.

(5) The provider shall ensure that caregivers do not leave children unattended on the diapering surface.

(6) The provider shall ensure that caregivers clean and sanitize the diapering surface after each diaper change, or use a disposable, waterproof diapering surface that is thrown away after each diaper change.

(7) The provider shall ensure that caregivers wash their hands after each diaper change.

(8) The provider shall ensure that caregivers place wet and soiled disposable diapers:

(a) in a container that has a disposable plastic lining and a tight-fitting lid;

(b) directly in an outdoor garbage container that has a tight-fitting lid; or

(c) in a container that is inaccessible to children.

(9) The provider shall ensure that indoor containers where wet and soiled diapers are placed are cleaned and sanitized each day.

KEY: child care facilities, child care, commercial preschool programs
Date of Enactment or Last Substantive Amendment: 2021
Authorizing, and Implemented or Interpreted Law: 26-39-203(1)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R398-15	Filing No. 53264

Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Children with Special Health Care Needs	
Room no.:	334	
Building:	Utah Department of Health- Highland Building	
Street address:	3760 S Highland Drive	
City, state:	Salt Lake City, UT 84106-4260	
Mailing address:	PO Box 146610	
City, state, zip:	Salt Lake City, UT 84114-6610	
Contact person(s):		
Name:	Phone:	Email:
Joyce McStotts	801-273-2956	jmcstotts@utah.gov
Colin Kingsbury	385-310-5238	ckingsbury@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R398-15. Adult Autism Treatment Program
3. Purpose of the new rule or reason for the change:
The purpose of this rule is to identify criteria and procedures for selecting adults who may qualify for assistance from the account and identify qualifications, criteria, and procedures for selecting service and treatment providers that receive disbursements from the Adult Autism Treatment Account.
The Department, in collaboration with the advisory committee, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to: specify assessment tools and outcomes that a qualified provider may use to determine the types of supports that a qualified individual needs; define evidence-based treatments that a qualified individual may pay for with grant

funding; establish criteria for awarding a grant under this chapter; specify the information that an individual shall submit to demonstrate that the individual is a qualified individual; specify the information a provider shall submit to demonstrate that the provider is a qualified provider; and specify the content and timing of reports required from a qualified provider, including a report on actual and projected treatment outcomes for a qualified individual.

4. Summary of the new rule or change:

This rule will identify criteria and procedures for selecting adults who may qualify for assistance from the Adult Autism Treatment Account and identify qualifications, criteria, and procedures for selecting service and treatment providers that receive disbursements from the Adult Autism Treatment Account.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The proposed rule results in an estimated fiscal cost for the staff time to complete the following duties: plan, promote, and facilitate quarterly AATA Advisory Committee Meetings, take and distribute meeting minutes, follow up with grant recipients to ensure funds are used appropriately, and the development of a yearly report for the state Legislature.

Currently, staff time and benefits are being absorbed within the normal state budget, upon receipt of funding it is estimated that 10% of funding will be used to cover these costs.

B) Local governments:

These proposed new rule requirements are not expected to have any fiscal impact on local governments' revenues or expenditures. This rule does not regulate local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

These proposed new rule requirements are not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule does not regulate small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

These proposed new rule requirements are not expected to have any fiscal impact on non-small businesses revenues or expenditures. This rule does not regulate non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

These proposed new rule requirements are not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state or local government entities revenues or expenditures. This rule does not regulate these groups.

F) Compliance costs for affected persons:

There are no anticipated costs and no additional resources needed to comply with this rule.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) department head approval of regulatory impact analysis:

The Interim Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

After conducting a thorough analysis, it was determined that this new rule will not result in fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Richard G. Saunders, Interim Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Title 26, Chapter 67		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/01/2021

10. This rule change MAY become effective on: 02/08/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Joseph Miner, MD, Deputy Director	Date:	11/30/2020
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R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.

R398-15. Adult Autism Treatment Program.

R398-15-1. Authority and Purpose.

(1) Authority for this rule is in Title 26, Chapter 67, Adult Autism Treatment Program.

(2) The purpose of this rule is to implement Title 26, Chapter 67, Adult Autism Treatment Program.

R398-15-2. Definitions.

(1) "Advisory committee" is defined in Subsection 26-67-102(2).

(2) "Qualified individual" is defined in Subsection 26-67-102(6).

(3) "Qualified provider" is defined in Subsection 26-67-102(7).

R398-15-3. Approved Assessment Tools.

(1) The following assessment tools shall be used by a qualified provider to determine the types of supports that a qualified individual needs:

(a) a peer-reviewed, standardized adaptive assessment tool, such as the Adaptive Behavior Assessment System - Third Edition, the Vineland Adaptive Behavior Scales - Third Edition, within a reasonable amount of time as determined by the provider;

(b) a peer-reviewed, standardized behavior assessment tool, such as the Conners Parent and Teacher Rating Scales, Vanderbilt Assessment Scales, Behavior Assessment System for Children, Achenbach Child Behavior Checklist, within a reasonable amount of time as determined by the provider;

(c) a peer-reviewed, standardized communication ability assessment, such as the Clinical Evaluation of Language Fundamentals - Fifth Edition, within a reasonable amount of time as determined by the provider; and

(d) a peer-reviewed, standardized cognitive ability assessment, such as the Stanford-Binet Intelligence Scales - Fifth Edition, the Comprehensive Test of Nonverbal Intelligence - Second Edition, Wechsler Intelligence Scale for Children - Fourth Edition, within a reasonable amount of time as determined by the provider.

R398-15-4. Approved Evidence-Based Treatments.

(1) The following evidence-based treatments a qualified individual may pay for with grant funding include: evidence-based treatments found on the National Autism Center's Evidence-Based Guidelines, such as Applied Behavior Analysis, Pivotal Response Training or Naturalistic Teaching Strategies, to provide treatment in the following areas:

- (a) academic instruction;
- (b) culinary, agriculture, and fitness education;
- (c) vocational and daily living skills; and
- (d) social and leisure skills.

R398-15-5. Criteria for Awarding a Grant.

(1) Providers shall submit a funding request to the advisory committee on a standard request for application form which will be developed and authorized by the advisory committee and made available by the department.

(2) An individual may apply for a grant from the program by submitting an application to a qualified provider.

(3) The department shall transmit a grant awarded on behalf of an applicant to a qualified provider designated by the applicant.

(4) The advisory committee shall consider the availability of funds in the Adult Autism Treatment Account before awarding a grant.

(5) The department shall create a file for the qualified individual that shall include:

- (a) the application;
- (b) related medical and service documentation;
- (c) correspondence from the qualified provider, qualified individual, and the department;
- (d) report on the evaluation of benefits and outcomes for individuals receiving services from the qualified provider;
- (e) the approved grant and supporting documentation; and
- (f) the file and documentation will be stored securely for 10 years after the completion of the grant and then be destroyed.

(6) The advisory committee may review and determine if the qualified provider is ineligible to receive funds when:

- (a) the qualified provider's approved services are found to be inactive for two years;
- (b) the qualified provider is no longer providing evidence-based treatments;
- (c) the department has made three documented attempts to contact the responsible party or recipient to discuss inactivity without response;
- (d) there is a violation of the terms of the executed grant; or
- (e) the qualified individual is no longer a Utah resident.

R398-15-6. Reporting Requirements.

(1) Funded providers shall submit a report as requested by the advisory committee on use of funds as outlined in the request for application, which may include:

- (a) a detailed description of how the qualified provider will report the evaluation of benefits and outcomes for qualified individuals receiving services;
- (b) types of therapies used;
- (c) amount of time qualified individuals received services;
- (d) goals for the qualified individuals receiving services;
- (e) outcomes for the qualified individuals receiving services; and
- (f) budget and justification for services provided using funding from the Adult Autism Treatment Account.

KEY: autism treatment, applied behavior analysis, autism, spectrum disorders

Date of Enactment or Last Substantive Amendment: 2021 Authorizing, and Implemented or Interpreted Law: 26-67-101; 26-67-102; 26-67-201; 26-67-202; 26-67-203; 26-67-204; 26-67-205

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R523-2	Filing No. 53225

Agency Information

1. Department:	Human Services
Agency:	Substance Abuse and Mental Health
Room no.:	Second Floor
Building:	Multi Agency State Office Building
Street address:	195 N 1950 W

NOTICES OF PROPOSED RULES

City, state:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R523-2. Local Mental Health Authorities and Local Substance Abuse Authorities
3. Purpose of the new rule or reason for the change:
Rule R523-2 is a large omnibus rule that has many requirements in need of an update to reflect current practice. Also, there are many technical changes needed to make the rule more compliant with the standardization attempts by the Governor's Office.
4. Summary of the new rule or change:
This amendment:
1) updates citations to statute,
2) makes technical changes to grammar and syntax,
3) removes outdated guidance such as requirements for DORA funds, which have been discontinued by the legislature,
4) adds the Utah State Hospital as a member of the Continuity of Care Committee to reflect current practice,
5) changes the Continuity of Care Committee meetings from monthly to regularly according to need,
6) requires the Local Mental Health Authority liaisons, to participate in the Continuity of Care Committee Meetings in person when possible if they have a patient being reviewed,
7) allows liaisons to attend the Continuity of Care Committee meetings via telehealth under exceptional circumstances, but liaisons must notify the Division and the Utah State Hospital in advance of the meeting,
8) changes reporting requirements from the Readiness, Evaluation and Discharge Implementation program to be made on Division designated electronic discharge programs consistently,
9) requires Local Mental Health Authorities to have at least two designated individuals with access to the designated

electronic program
10) changes requirement for discharge to clinically ready, and
11) allows a process for the Local Mental Health Authorities to dispute the Utah State Hospital's determination of a patient being clinically ready for discharge.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The Substance Abuse and Mental Health Division (Division) does not anticipate any costs or savings to state budgets as a result of this rule. The administrative requirements modified in this rule are already being performed by the Department of Human Services.
B) Local governments:
The Division does not anticipate any budget costs or savings for local governments as a result of this rule. The administrative requirements modified in this rule are already being performed by local governments, and the changes merely reflect current practices.
C) Small businesses ("small business" means a business employing 1-49 persons):
The Division does not anticipate any cost or savings to small businesses as a result of this rule. There are no regulations in this rule that have an effect on entities outside of local governments.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
The Division does not anticipate any costs or savings to non-small businesses as a result of this rule. There are no regulations in this rule that have an effect on entities outside of local governments.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):
The Division does not anticipate any cost or savings to persons other than small businesses, non-small businesses, state, or local government entities as a result of this rule. There are no regulations in this rule that have an effect on entities outside of local governments.
F) Compliance costs for affected persons:
The Division does not anticipate any costs or savings to affected persons as a result of this rule amendment. Programming and services regulated by this rule are core

ongoing services that have been provided to the public by the state and local governments for many years, and changes to Medicaid funds would account for any changes of cost to the public.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Department does not anticipate any fiscal impact on businesses as a result of compliance requirements in this rule, which only affects the publicly-funded, county-based Local Authority Mental Health system.

B) Name and title of department head commenting on the fiscal impacts:

Ann Williamson, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 62A-15-105	Subsection 62A-15-902(2)(c)	Subsection 62A-15-103(2)(a)
Subsection 62A-15-103(2)(b)(ii)	Subsection 62A-15-103(2)(g)	Subsection 62A-15-108(1)
Subsection 62A-15-108(2)	Subsection 62A-15-610(2)(a)	Subsection 62A-15-611(2)(a)
Subsection 17-43-301(6)(a)(x)	Section 76-10-523.5	Section 76-8-311.1
Section 76-8-311.3		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/01/2021

10. This rule change MAY become effective on: 02/08/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	11/23/2020
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R523. Human Services, Substance Abuse and Mental Health. R523-2. Local Mental Health Authorities and Local Substance Abuse Authorities.

R523-2-1. Authority.

This rule is promulgated under authority granted to the Division of Substance Abuse and Mental Health (Division) by ~~Subsections~~ Section 62A-15-105, and Subsections 62A-15-108(1), 62A-15-611(2)(a), ~~62A-15-612(2)~~ 62A-15-610(2)(a) and 62A-15-902(2)(c).

R523-2-2. Purpose.

- (1) The purpose of this rule is to provide guidance on:
 - (a) ~~Guidance on~~ the priorities for treatment services;
 - (b) ~~Guidance on~~ the rights of individuals participating in services[-];
 - (c) ~~A-~~ process for Local Mental Health Authorities (LMHAs) and Local Substance Abuse Authorities (LSAAs) to set policies on fees for service[-];
 - (d) ~~Guidance on~~ LMHA[?] and LSAA program standards[-];
 - (e) ~~Guidance on~~ the formula for allocation of funding.
 - (f) ~~Guidance on~~ allocation of Utah State Hospital (Hospital) beds to LMHAs[-];
 - (g) ~~Guidance on~~ admission to the Hospital and coordination of care[-];
 - (h) ~~Guidance on~~ determining the proper LMHA under special situations[-];
 - (i) ~~Guidance on~~ transfer planning between LMHAs from the Hospital[-];
 - (j) ~~Guidance on~~ conflict resolution[-]; and
 - (k) ~~Guidance on~~ prohibited items and devices on the grounds of public mental health facilities[-];

R523-2-3. Priorities for Treatment Services.

(1) ~~Programs providing substance use disorder and mental health treatment services with public funds (federal, state, and local match) shall comply with the priorities listed below.~~ The Division shall regularly seek, and receive input from the Utah Behavioral Health Planning and Advisory Council on priorities for services.[-]

(2) Programs providing substance use and ~~M~~ mental ~~H~~ health services ~~provided~~ with ~~public funds~~ (federal, state, and local matching funds[?]) shall provide:

- (a) services based on immediacy of need, and severity of the mental illness, and ~~P~~ priority may also be given to under-served age groups as appropriately demonstrated through needs studies[-];
- ~~(a) E~~ (b) effective and responsive crisis intervention, suicide prevention, assessment, direct care, and referral program available to all citizens[-];
- ~~(b) Provision of~~ (c) the least restrictive and most appropriate treatment and settings for:
 - (i) ~~C~~ children, youth, and adults with severe mental illness;
 - (ii) ~~C~~ children, youth, and adults with acute mental illness;
 and
 - (iii) ~~C~~ children, youth and adults who are receiving services from other divisions within the Department of Human Services[-];
- ~~(c) Provisions of~~ (d) services to children with emotional disabilities, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general[-];
- ~~(d) Provision of~~ (e) services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general[-]; and
- ~~(e) Provision of~~ (f) consultation, education and preventive mental health services targeted at high risk groups in particular.

~~(3)~~ (2) Programs providing ~~S~~ substance use disorder treatment services ~~provided~~ with ~~public funds~~ (federal, state, and local matching funds[?]) shall provide priority admission to the following populations ~~(f) in the following order of priority~~:

- (a) ~~P~~ pregnant females who use drugs by injection;
- (b) ~~P~~ pregnant females who use substances;
- (c) ~~O~~ other persons who use drugs by injection;
- (d) ~~S~~ substance using females with dependent children and their families, including women who are attempting to regain custody of their children; and
- (e) ~~AH~~ any other client[s] with a substance use disorder, regardless of gender or route of use.

R523-2-4. Rights of Individuals Participating in Services.

(1) ~~All~~ Any service provider[s] contracted with the Division and ~~County Local Authority programs~~ the LMHAs and LSAAs shall disclose the following information in writing to ~~all~~ each individual[s] participating in treatment services:

- (a) ~~R~~ their rights and responsibilities to participate in the development of the treatment or other type of service plan[-];
- (b) ~~R~~ their right to be involved in selection of their primary therapist[-];
- (c) ~~R~~ their right to access their individual treatment records[-];
- (d) ~~R~~ their right to informed consent regarding medications[-];
- (e) ~~R~~ their rights regarding medication-assisted treatment[-];
- (f) ~~D~~ disclosure of all program fees and personal financial responsibility[-];
- (g) ~~I~~ information on grievance procedures that include[s] ~~all~~ any necessary information to file a formal grievance[-]; and
- (h) ~~S~~ the service provider's commitment to treat individuals with substance use disorders and mental health consumers with dignity and individuality in a positive, supportive and empowering manner.

(2) This information shall be shared with the individual participating in treatment services at the time of intake, and a signed copy made part of ~~their~~ that individual's file. The Division shall periodically review this process to assure appropriate content is is present within the rights statement, and that proper application of the intent of this policy is being carried out by the provider.

(3) If an individual is impaired or temporarily incapable of understanding the initial information, it shall be shared again when the individual is able to understand the information and give informed consent, and ~~This~~ shall ~~also be made part of their~~ documented in the individual's file.

R523-2-5. LMHA[?] and LSAA Fee Policy.

(1) Each LMHA[?] and LSAA shall require ~~all~~ any program[s] that receives federal, ~~and~~ state and matching funds from the Division and provides services to clients to establish a policy to set and collect fees.

~~(a)~~ Each fee policy shall include:

- ~~(i) A~~ (a) a fee reduction plan based on the client's ability to pay for services; and
 - ~~(ii) A~~ (b) a provision that clients who have received an assessment and require mental health or substance use disorder services shall not be denied services based on the lack of ability to pay.
- ~~(b)~~ (2) Any adjustments to the assessed fee shall follow the procedures approved by the LMHA[?] or the LSAA.
- ~~(2)~~ (3) The governing body of each LMHA[?] and LSAA shall approve the fee policy, and shall set a usual and customary rate for services rendered.

~~(3)~~(4) ~~[All]Each~~ LMHA~~[/]~~ and LSAA program~~[s]~~ shall provide a written explanation of the fee policy to ~~[all]~~clients at the time of intake except in the case of emergency services.

~~(4)~~(5) ~~[All clients]Each client~~ shall be assessed fees based on:

(a) ~~[F]the~~ usual and customary rate established by the LMHA~~[/]~~ or LSAA, or

(b) ~~[A]a~~ negotiated contracted cost of services rendered to clients.

~~(5)~~(6) Fees assessed to clients shall not exceed the average cost of delivering the service.

~~(6)~~~~All~~(7) Any fee~~[s]~~ assessed to clients, including upfront administrative fees, shall be reasonable as determined by the LMHA~~[/]~~ or LSAA.

~~(7)~~~~All programs~~(8) Each LMHA and LSAA shall make reasonable effort to collect outstanding fee charges and may use an outside collection agency.

~~(8)~~~~All programs~~(9) Each LMHA and LSAA may reduce the assessed fee for services if the fee is determined to be a financial hardship for the client.

~~(9)~~(10) The Division shall annually review each ~~[program's]~~LMHA's and LSAA's policy and fee schedule to ensure that the elements set in this rule are incorporated.

R523-2-6. LMHA~~[/]~~ and LSAA Minimum Program Standards.

~~[-----]~~(1) ~~The Division establishes minimum standards for LMHA/LSAA programs.]~~

~~(a)~~(1) Each LMHA~~[/]~~ and LSAA program shall have the appropriate current license issued by the Office of Licensing, Department of Human Services, and any other required licenses.

~~(b)~~(2) Each LMHA~~[/]~~ and LSAA shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:

~~(i)~~(a) ~~[Be]be~~ consistent with the Division ~~[D]directives[~~for the Division of Substance Abuse and Mental Health~~];~~

~~(ii)~~(b) ~~[Designate]designate~~ the projected use of state and federal contracted dollars and the 20% county match dollars; and

~~(iii)~~(c) ~~[Define]define~~ the LMHA's~~[/]~~ or LSAA's priorities for service and the population to be served.

~~(e)~~(3) Each LMHA shall provide or arrange for the provision of services within the following continuum of care:

~~(i)~~(a) ~~[Inpatient]inpatient~~ care and services~~[~~(hospitalization)~~];~~

~~(ii)~~(b) ~~[Residential]residential~~ care and services;

~~(iii)~~(c) ~~[Day]day~~ treatment and psycho-social rehabilitation;

~~(iv)~~(d) ~~[Outpatient]outpatient~~ care and services;

~~(v)~~(e) ~~[Twenty-four]twenty-four~~ hour crisis care and services;

~~(vi)~~(f) ~~[Psychotropic]psychotropic~~ medication management;

~~(vii)~~(g) ~~[Case]case~~ management services;

~~(viii)~~(h) ~~[Community]community~~ supports including in-home services, housing, family support services and respite services;

~~(ix)~~(i) ~~[Consultation]consultation,~~ education and preventative services, including case consultation, collaboration with other county service agencies, public education and public information; and

~~(x)~~(j) ~~[Services]services~~ to persons incarcerated in a county jail or other county correctional facility.

~~(b)~~(4) Each LSAA shall provide or arrange for the provision of services within the following continuum of care:

~~(i)~~(a) ~~[Universal]universal~~ prevention;

~~(ii)~~(b) ~~[Selective]selective~~ prevention;

~~(iii)~~(c) ~~[Indicated]indicated~~ prevention including the educational series approved by the Division in Rule R523-11 for individuals convicted of driving under the influence~~];~~~~[and]~~

~~(iv)~~(d) ~~[Treatment]treatment~~ services prescribed by Division contract and Directives; and

~~(v)~~(e) ~~[Recovery]recovery~~ ~~[S]support~~ ~~[S]services.~~

~~(e)~~(5) Each LMHA~~[/]~~ and LSAA shall participate in a yearly on-site evaluation conducted by the Division.

~~(f)~~(6) ~~[The]Each~~ LMHA~~[/]~~ and LSAA shall be responsible for monitoring and evaluating all subcontracts to ensure:

~~(i)~~(a) ~~[Services]services~~ delivered to consumers commensurate with funds provided; and

~~(ii)~~(b) ~~[Progress]progress~~ is made toward accomplishing contract goals and objectives.

~~(g)~~(7) ~~[The]Each~~ LMHA~~[/]~~ and LSAA shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

R523-2-7. Formula for the Annual Allocation of Funding.

~~[-----]~~(1) ~~The Division establishes by rule, a formula for the annual allocation of funds to LSAA's and a formula for the annual allocation of funds to the LMHA's.]~~

~~(a)~~(1) The formulas for the annual allocation of funds to LMHAs and LSAA's do not apply to funds used by the Division for administration, statewide services consistent with the requirements of ~~[Section 62A-15-201 et seq.]~~Subsection 62A-15-108(2) for discretionary grants awarded to the Division, funds appropriated for ~~[drug court]Drug Court, [the Drug Offender Reform Act and the]~~Medicaid ~~[M]matching funds, and any other funds where Utah code establishes the funding process.~~

~~(b)~~(2) Funds used by the Division for administration shall not exceed 5% of the total annual legislative appropriation to the Division excluding the appropriation for the ~~[Utah State]Hospital.~~

~~(c)~~(3) The funding formulas shall be applied annually to state and federal block grant funds appropriated by the legislature to the Division, and are intended for the annual equitable distribution of these funds to the state's LMHAs and LSAA's.

~~(d)~~(4) Excluding discretionary grants,~~[DORA,]~~ Drug Court, and other programs for which Utah ~~[C]code~~ establishes the funding process, funds used by the Division for statewide substance use disorder services consistent with requirements of ~~[Section 62A-15-201 et seq.]~~Subsection 62A-15-108(2) shall not exceed 15% of the total annual substance abuse legislative appropriation to the Division.

~~(e)~~(5) Population data used in the formulas shall be updated annually using the most current data available from the Utah Department of Health's website, Public Health Indicator Based Information System (IBIS).

~~(f)~~(6) New funding and~~[or]~~ decreases in funding shall be processed, and distributed through the funding formulas.

~~(g)~~(7) Each LMHA~~[/]~~ and LSAA shall provide funding equal to at least 20% of the state general fund appropriation that it receives to fund services described in that LMHA's~~[/]~~ or LSAA's annual plan, and~~[-];~~

~~(h)~~(a) ~~[F]the~~ Division determines that the funds required by Subsection ~~[17-43-301(4)(a)(x)]~~17-43-301(6)(a)(x), ~~[I]normally called the 20% match requirement,~~~~[I]~~ shall be paid from tax revenues assessed by the county legislative body, and collected by the County Clerk~~[-];~~

~~(ii)(b)~~ [F]if a LMHA[] or LSAA is unable to provide the required matching funds, the LMHA[] or LSAA shall be allocated the amount the LMHA[] or LSAA can match[];

~~(ii)(c)~~ [E]xcess funds may be allocated on a one-time basis to LMHAs[] and LSAAAs with the ability to provide matching funds[]; and

~~(iv)(d)~~ [F]if no LMHA[] or LSAA can provide the required match, the Division may use the funds to purchase statewide services.

~~(h) Changes in funding related to the adoption of new formulas in 2014 shall be phased in over a five year period beginning in State Fiscal year 2015-~~

~~(2)(8)~~ Funding for mental health shall be allocated as follows:

(a) [F]the Division shall allocate 5% of mental health funds to the 24 smallest counties ranked by population as a rural differential[]; and

~~(b)~~ The rural differential shall be allocated using the following methodology:

(i) 35% divided in equal amounts to the six smallest counties[];

(ii) 30% divided in equal amounts to the seventh through twelfth smallest counties[];

(iii) 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties[]; and

(iv) 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties[];

~~(b)(c)~~ [F]the Division shall allocate all remaining mental health funds to the LMHAs on a per capita basis, ~~according to~~ using the most current population data available ~~from~~ on the Utah Department of Health's IBIS website[]; and

~~(e)(d)~~ [F]the funding formula may utilize a determination of need other than population if the Division establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

~~(3)(9)~~ The funding formula for substance use disorder services shall be applied annually to state and federal funds appropriated by the legislature to the Division, and is intended for the annual equitable distribution of these funds to the state's LSAAAs.

~~(a) The Division shall allocate a total of \$2,390,643 in funds used for prior cost of living increases and funds previously contracted with statewide residential providers to the LMHAs/LSAAAs in an amount equal to the 2014 allocation.~~

~~(b)(10)~~ The Division shall allocate 5% of the remaining funds to the 24 smallest counties ranked by population. The rural differential shall be allocated using the following methodology:

~~(i)(a)~~ 35% divided in equal amounts to the six smallest counties[];

~~(ii)(b)~~ 30% divided in equal amounts to the seventh through twelfth smallest counties[];

~~(iii)(c)~~ 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties[];

~~(iv)(d)~~ 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties[];

~~(e)(e)~~ ~~Sixty percent~~ [60%] of the remaining funds shall be allocated to each county based on the incidence and prevalence of substance use disorders based on the following[];

(i) ~~The~~the percent of adults estimated to be binge drinkers as reported by the Behavioral Risk Factor Surveillance System (BRFSS)[];

(ii) ~~The~~the percent of adults estimated to be chronic drinkers as reported by BRFSS[];

(iii) ~~The~~the percent of youth reporting alcohol use within the past 30 days by the most current Student Health and Risk Protection Survey (SHARP)[];

(iv) ~~The~~the percent of youth estimated to be binge drinkers by the most current SHARP[]; and

(v) ~~The~~the percent of youth needing drug treatment as reported by the most current SHARP[]; and

~~(f)~~ [40%] of the remaining funds shall be allocated to LSAAAs on a per capita basis, according to the most current population data available from the IBIS.

R523-2-8. Formula for Allocation of Medicaid Match Funds.

~~(1) Medicaid match funds appropriated to the Division shall be allocated to the LMHAs/LSAAAs using the methodology described below:~~

~~(1)~~ The Division shall obtain the following data from the Utah Department of Health:

~~(a)~~ ~~The~~the number of eligible Medicaid recipients in each county, for each month of the previous state fiscal year hereinafter called Medicaid Member Months; and[]

~~(b)~~ ~~The~~the actuarially established rates for each county[];

~~(2)~~ The Division shall calculate [C]county [N]need for Medicaid match funds by multiplying each [C]county's [F]total Medicaid Member Months by their corresponding actuarial rates for the most current 12 month period.

~~(3)~~ The Division shall sum all [C]county [N]need to determine the [S]state Medicaid [M]match [N]need.

~~(4)~~ The percent of total Medicaid match funds for each local authority shall be determined by dividing the sum of [C]county [N]need by the [S]state Medicaid [M]match [N]need.

~~(5)~~ ~~Local authorities~~LMHAs and LSAAAs that do not participate in the Medicaid prospective payment-capitation plan shall receive the amount of funds they would have received if the funds had been distributed using state population.

~~(6)~~ Each LMHA and LSAA shall provide funding from tax revenues assessed by the County legislative body equal to at least 20% of the Medicaid match funds[]; and:

~~(a)~~ [F]if a LMHA[] or LSAA is unable to provide the required matching funds, the LMHA[] or LSAA shall be allocated the amount the LMHA[] or LSAA can match[]; and

~~(b)~~ excess funds may be allocated on a one-time basis to local authorities with the ability to provide matching funds.

R523-2-9. Distribution of Fee On Fine (DUI) Funds.

~~(1) The Fee On Fine funds collected by the court system under the criminal surcharge law and remitted to the State Treasurer will be allocated to the LSAAAs based upon each county's percent of the total state population as determined at the time of the funding formula as described in Section R523-2-7. The Division shall authorize quarterly releases of these funds to the county commission of each county for which they are allocated unless notified in writing by the LSAA's governing board to send the funds to the local service provider.~~

~~(2) Utah Code 62A-15-503 states these funds "shall be used exclusively for the operation of licensed alcohol or drug rehabilitation programs and education, assessment, supervision, and other activities related to and supporting the rehabilitation of persons convicted of driving under the influence of intoxicating liquor or drugs. A requirement of the rehabilitation program shall be participation with a victim impact panel or program providing a forum for victims of alcohol or drug related offenses and defendants to share experiences on the impact of alcohol or drug related incidents in their lives."~~

~~(3) Each counties proposed use of the funds shall be identified in the Local authority area plan submitted to the Division each year as described in Utah Code 62A-15-103(2)(c)(xi).~~

~~(4) Each counties actual expenditures shall be documented in an expenditure report submitted by the local authority within 60 days of the end of the State fiscal year that describes the actual use of the funds from this account.~~

~~(5) The Division shall review and monitor funds from this project during the annual site visit.~~

R523-2-[40]9. Allocation of [Utah State] Hospital Adult Bed Days to Local Mental Health Authorities.

(1) The [Division herein establishes a formula to allocate to LMHAs the adult beds for persons who meet the requirements of Subsection 62A-15-610(2)(a).

~~(2) The formula established provides for allocation of adult beds shall be based on:~~

(a) ~~[The]the percentage of the state's adult population located within a LMHA catchment area; and~~

(b) ~~[A]a differential to compensate for the additional demand for hospital beds in LMHA catchment areas that are located within urban areas.~~

~~(3)(2) The [Division hereby establishes a]formula to determine adult bed allocation shall be based on:~~

(a) ~~[T]the most recent available population estimates [are] obtained from the Utah Department of Health's IBIS website[-];~~

(b) ~~[T]the total adult population figures for the [S]state; and [are identified. Adult means age 18 and over.]~~

(c) ~~the [A]adult population numbers [are identified-] for each county.~~

~~(4)(3) [The urban counties are identified (county classifications are determined)]Counties that are currently classified as urban by the lieutenant governor's office pursuant to [Subsections]Section 17-50-501 [and 17-50-502 and the most recent classifications are used to determine which counties are defined as urban] and [are given a differential as follows:~~

~~(i)(a) [The]the total number of adult beds available at the [Utah State] Hospital [is]shall be determined[-]; and~~

~~(ii)(b) 4.8% [is]shall be subtracted from the total number of beds available for adults to be allocated as an urban differential.~~

~~(e)(4) The total number of available adult beds minus the urban differential [is]shall be multiplied by the county's percentage of the state's total adult population to determine the number of allocated beds for each county.~~

~~(4)(5) Each [catchment area's]LMHA's service areas for individual county numbers [are]shall be added to determine the total number of beds allocated to a [catchment area]LMHA. This fractional number [is]shall be rounded to the nearest whole bed.~~

~~(g)(6) The urban differential [beds are then]shall be distributed to urban counties based on their respective percentage of urban counties as a whole.~~

~~(4)(7) At least one adult bed [is]shall be allocated to each LMHA.~~

~~(4) In accordance with Subsection 62A-15-611(6), the Division shall periodically review and make changes in the formula as necessary to accurately reflect changes in population.~~

~~(5) Applying the formula:~~

~~(a)(8) Adjustments of adult beds, as the formula is applied, shall become effective at the beginning of the next fiscal year.~~

~~(4)(9) The Division is responsible to calculate the adult bed allocation[-],and~~

~~(e) Each]to notify each LMHA [will be notified-]of changes in adult bed allocations.~~

~~(6)(10) The number of allocated adult beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.~~

~~(7)(11) A LMHA may sell or loan its allocation of adult beds to another LMHA.~~

R523-2-[41]10. Allocation of [Utah State] Hospital Pediatric Beds to Local Mental Health Authorities for Individuals Under the Age of 18.

~~(1) [The Division establishes a formula to allocate to LMHAs the pediatric beds at the Utah State Hospital.~~

~~(2)-]The formula established provides for allocation based on the percentage of the state's population of persons under the age of 18 located within a LMHA [catchment]service area.~~

~~(3)(2) Each LMHA shall be allocated at least one pediatric bed.~~

~~(4)(3) The formula to determine pediatric bed allocation shall be based on:~~

(a) ~~[T]the most recent available population estimates [are] obtained from the Utah Department of Health's Indicator Based Information System (IBIS) website[-];~~

(b) ~~[T]the total pediatric population figures for the [S]state; and [are identified. Pediatric means under the age of 18.]~~

(c) ~~the [P]pediatric population figures [are identified-] for each county.~~

~~(4)(4) The total number of pediatric beds available [is]shall be multiplied by the county's percentage of the state's total pediatric population. This will determine the number of allocated pediatric beds for each county.~~

~~(e)(5) Each [catchment area's]LMHA's service area for individual county numbers [are]shall be added to determine the total number of pediatric beds allocated to a [catchment]LMHA's service area. This fractional number [is]shall be rounded to the nearest whole bed.~~

~~(5) The Division shall periodically review and make changes in the formula as necessary.~~

~~(6) Applying the formula:~~

~~(a)(6) Adjustments of pediatric beds[-, as the formula is] shall be applied, [shall]and become effective at the beginning of the new fiscal year.~~

~~(4)(7) Each LMHA shall be notified of changes in pediatric bed allocations.~~

~~(7)(8) The number of allocated pediatric beds shall be reviewed, and adjusted as necessary or at least every three years as required by statute.~~

~~(8)(9) A LMHA may sell or loan its allocation of pediatric beds to another LMHA.~~

R523-2-[42]11. Admission to the Hospital and Coordination of Care.

(1) The Division has oversight of the [Utah State] Hospital as per Subsection 62A-15-103(2)(b)(ii) and shall oversee the Continuity of Care Committees for adult and children, [youths and their patients, (when]When the patient is a child or youth, then patient also refers to the parent [and/or legal guardian[-];] as it pertains to [A]admissions, [C]coordination of [C]care, [D]discharges and [T]transfers between LMHAs of patients to and from the [Utah State] Hospital[-(Hospital)].

(2) The Division and Hospital shall conduct [monthly]Continuity of Care Committee meetings regularly according to need, unless the time for the meetings is postponed or canceled for good cause.

~~(2)~~(3) Each LMHA shall assign a liaison to the Hospital as the identified representative of the LMHA.

~~(4)~~(4) The ~~[L]~~liaison shall coordinate patient needs for admission to the Hospital and shall complete the Hospital Pre-admission packet, which includes identifying community discharge and treatment options prior to admission. Any individual or family member independently requesting voluntary Hospital admission shall be referred to the appropriate LMHA geographical area in which the individual currently resides.

~~(5)~~(5) LMHA liaisons are responsible to participate in the coordination of care at the Hospital. This includes participation in clinical staffing in person when possible, when the LMHA has a patient in the Hospital, and when the Continuity of Care Committee is meeting at least monthly. The liaisons and Hospital staff are required to participate in order to coordinate patient treatment, discuss the progress of assigned patients and meet with patients and Hospital staff jointly to formulate patient care. On occasion in exceptional circumstances, liaisons may attend a Continuity of Care Committee meeting, and to coordinate patient treatment via teleconference, preferably video conference, if circumstances make travel unreasonable. Liaisons will inform the Division and Hospital staff in advance if this is the case.

~~(6)~~(6) Patients admitted to the ~~[F]~~forensic units are under the jurisdiction of the criminal court system; if the need arises the LMHA liaison will participate in community discharge placements, and follow up care.

~~(7)~~(7) Hospital staff and liaison shall coordinate discharge plans. As there are multiple factors inherent in determining "readiness for discharge," this decision will be made:

~~(a)~~ (a) on an individual basis, with input from the patient, the Hospital, the LMHA and the Division as necessary~~[-]; and~~

~~(b)~~ (b) with patient's preferences and feedback regarding discharge placements as a consideration.

~~(8)~~ (8) Outplacement funds shall be used to resolve financial barriers that delay or complicate patients discharge.~~[-Patient's preferences and feedback regarding discharge placements shall be considered.]~~

~~(9)~~ (9) For adult patients the LMHA liaison is required to arrange discharge placement and follow up care once the patient is ready for discharge as indicated by the Division's ~~[REDI]designated electronic discharge program[-(Readiness, Evaluation and Discharge Implementation)]~~.

~~(10)~~ (10) The Hospital and LMHAs are required to use the ~~[REDI]designated program consistently, and;[-]~~

~~(a)~~ (a) LMHAs are required to have at least two designated individuals with access to the electronic program to ensure uninterrupted coverage; and [REDI information]

~~(b)~~ (b) information from the designated program will be distributed monthly to the Hospital, and the LMHAs to track progress toward discharge.

~~(11)~~ (11) The philosophy of the Hospital is to provide short-term inpatient care for the purpose of stabilization with the goal of transition to a less restrictive level of care as soon as possible. If the Hospital ~~and~~or the LMHA determine that the patient is clinically ready for discharge, and the coordination of the placement is not occurring, the Hospital and~~/or~~ liaison ~~is~~are required to notify the Division within five business days.

~~(12)~~ (12) If the LMHA does not agree the patient is clinically ready for discharge then the LMHA shall indicate disagreement, including a note in the coordination software system, within 5 business days of the Hospital indicating readiness for discharge.

~~(13)~~(13) The ~~[L]~~liaison shall follow the Hospital's policies on admission, treatment, discharge, and transfers of ~~all~~each Hospital patient[s].

R523-2-~~14~~12. Determining the Proper LMHA Under Special Situations.

(1) ~~In the following special situations, the proper LMHA will be determined as follows:~~

~~(a) Homeless: -]An [F]individual[s] who [are]is homeless and in need of Hospital admission shall be [the responsibility of]referred by the LMHA in which the individual [came]comes to the attention of local emergency services. If from out of state, the homeless individual shall be referred to the LMHA where the individual was identified as mentally ill and in need of services.~~

~~(b)(2) [Children and Adolescent Patients: Children and Adolescents]A child or adolescent in state custody shall be referred to the LMHA in which they resided prior to their custody being changed to the Division of Child and Family Services or the Division of Juvenile Justice Services.~~

~~(c)(3) [Forensic Patients: When a]A forensic patient, placed at the Hospital pursuant to criminal adjudication as set forth in [Utah Code]-Section 62A-15-902, and[is] determined to meet [criteria for]civil commitment criteria~~[-the patient]~~ shall be committed to the LMHA where the patient resided ~~[prior to his/her arrest]before being arrested.~~~~

~~(d)(4) [Prison Transfers: -]Utah State Prison inmates who are transferred to the Hospital Forensic Unit, and subsequently civilly committed, become the responsibility of the LMHA where the person resided prior to incarceration.~~

~~(e)(5) [Developmental Center Transfers: -]An [F]individual[s] placed at the Utah State Developmental Center (USDC), who [are]is transferred to the Hospital for treatment of a mental illness [are]is the responsibility of the LMHA of the~~[#]~~ individual's last community residence, ~~[excluding foster and group home placements less than one year in duration]~~. If the individual was admitted to the USDC as a child, ~~the residence of]the custodial parent[s](~~6~~) residence~~ at the time of admission to USDC shall be used to determine the responsible LMHA. The LMHA is responsible for treatment and discharge planning during the course of the individual's Hospital stay.~~

R523-2-~~14~~13. Transfer Planning Between LMHAs From the Hospital.

(1) When a Hospital patient or the patient's legal guardian desires to relocate to a new geographical area, the patient's LMHA liaison ~~[(the liaison)-]responsible for the civil bed in which the patient currently resides[-]~~ shall notify the receiving LMHA regarding the desire of the patient. ~~[It is the]The~~ referring liaison~~[s]~~ has the responsibility to discuss the matter with the patient, and with the receiving LMHA, and work toward discharge.

(2) The referring and receiving LMHA liaison shall discuss the transfer, and shall provide information as needed.

(3) Once the receiving LMHA accepts the referral, the receiving LMHA shall proceed with Hospital patient discharge planning. During the time period between the referral to the receiving LMHA and Hospital discharge, the Hospital patient shall continue to be assessed against the bed allocation of the referring LMHA. The receiving LMHA is expected to work toward discharge.

(4) The LMHAs may negotiate an agreement ~~[(LMHA to LMHA)]with one another, and~~ if the patient returns to the Hospital, the patient returns to the referring LMHA's bed. The agreement is not to exceed one year, whereby the referring LMHA agrees the patient's bed shall be assessed against the bed allocation of the referring LMHA. The

agreement shall ~~specifies~~ specify the role of each LMHA, and who is responsible for providing needed services and payment for those services. Any such agreement shall be made in writing. If a LMHA to LMHA agreement cannot be reached, then the conflict resolution process as outlined in Section R523-2-14~~[15 below]~~ shall be followed.

(5) At the conclusion of the negotiated period, the receiving LMHA shall assume all responsibility for the full continuum of mental health services, including Hospital care.

R523-2-~~14~~14. Conflict Resolution.

(1) The Division will work to resolve conflicts between the Hospital and a LMHA, as well as conflicts between LMHAs.

~~(a)~~(2) If negotiations between a LMHA[s] and the ~~[USH]Hospital~~ regarding admissions, discharges or provisions of ~~[consumer]patient~~ services fails to be resolved at the local level, the following steps shall be taken:

~~(i)~~~~F~~(a) the director of the Division or designee shall appoint a committee to review the facts of the conflict, and make recommendations;

~~(ii)~~~~F~~(b) if the recommendations of the committee do not adequately resolve the conflict, the clinical or medical director of the LMHA and ~~[USH]the Hospital~~ clinical director shall meet, and attempt to resolve the conflict;

~~(iii)~~~~F~~(c) if a resolution cannot be reached, the LMHA director and the superintendent of the ~~[USH]Hospital~~ shall meet, and attempt to resolve the conflict; or

~~(iv)~~~~F~~(d) if a resolution cannot be reached, the director of the Division or designee shall make the final decision.

~~(b)~~(3) If conflicts arise between LMHAs regarding admissions, discharges, or provisions of consumer services, the final authority for resolution shall rest with the director of the Division or designee.

R523-2-~~14~~15. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.

(1) Pursuant to ~~[the requirements of Subsection 62A-15-602 (9), and]~~ Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, ~~[all facilities]~~any facility owned or operated by community mental health centers that have any contracts with a LMHA ~~[and]~~ or the Division are designated as secure areas.

~~(2)~~ ~~[Accordingly all]~~Any weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers.

~~(3)~~ There shall be a prominent visual notice of secure area designation.

~~(4)~~ Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.

KEY: funding formula, bed allocations, Local Mental Health Authority, Local Substance Abuse Authority

Date of Enactment or Last Substantive Amendment: 2021~~April 17, 2019~~

Authorizing, and Implemented or Interpreted Law: 17-43-301~~(4)~~(6)(a)(x);~~17-50-501; 17-50-502;~~ 62A-10-103(2)(a); 62A-15-103(2)(b)(ii); 62A-15-103(2)(g); 62A-15-105; 62A-15-108(1); 62A-15-108(2);~~62A-15-201 et seq.; 62A-15-602(9);~~ 62A-15-610(2)(a); 62A-15-611(2)(a);~~62A-15-612;~~ 62A-15-902(2)(c); 76-8-311.1; 76-8-311.3; 76-10-523.5

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R527-300	Filing No. 53223

Agency Information

1. Department:	Human Services	
Agency:	Recovery Services	
Street address:	515 E 100 S	
City, state:	Salt Lake City, UT 84102-4211	
Mailing address:	PO Box 45033	
City, state, zip:	Salt Lake City, UT 84145-0033	
Contact person(s):		
Name:	Phone:	Email:
Scott Weight	801-741-7435	sweigh2@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:	R527-300. Income Withholding
3. Purpose of the new rule or reason for the change:	This amendment is intended to make Section R527-300-4, Affidavit of Delinquency, consistent with Rule R527-254, Limitation on Collection of Arrears.
4. Summary of the new rule or change:	Section R527-300-1 was amended to include a statement that Office of Recovery Services (ORS) is authorized by statute to use income withholding to collect child support. Section R527-300-2 is being removed because the information is available in the Utah Code. Section R527-300-3 (Section becoming R527-300-2) is being re-worded to clarify how delinquency is determined. Section R527-300-4 (becoming Section R527-300-3) is being amended based on Rule R527-254 which defines the circumstances in which ORS will collect support arrears which accrue during time periods when there is not an open IV-D services case with ORS. Section R527-300-5 is being removed because this information is available in the Utah Code.

Section R527-300-6 becomes Section R527-300-4.

Section R5427-300-7 is being removed.

Section R527-300-8 is being removed because the information is available to employers on the income withholding documents.

Section R527-300-9 (becoming Section R527-300-5) was reformatted (nonsubstantive change).

Section R527-300-10 was removed because this information is available in the Utah Code.

Applicable references to the Utah Code were added to the Authorizing, and Implemented or interpreted Law reference at the end of the text, and Utah Code that is no longer applicable due to the amendment was removed.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule is being amended so that it is consistent with Rule R527-254 and to provide clarity regarding the conditions upon which ORS may initiate income withholding. Therefore, there is no anticipated cost or savings to the state budget due to the amendments to this rule.
B) Local governments:
Administrative rules of the Office of Recovery Services do not apply to local governments. This rule concerns income withholding initiated by ORS. Therefore, there are no anticipated costs or savings for local governments due to this amendment.
C) Small businesses ("small business" means a business employing 1-49 persons):
The amendments to this rule do not change ORS processes or procedures regarding sending income withholdings or the volume of income withholdings sent. Therefore, there are no anticipated costs or savings to small businesses due to the amendments.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
The amendments to this rule do not change ORS processes or procedures regarding sending income withholdings or the volume of income withholdings sent. Therefore, there are no anticipated costs or savings to non-small businesses due to the amendments.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

The amendments to this rule do not change ORS processes or procedures regarding sending income withholdings or the volume of income withholdings sent. Therefore, there is no anticipated effect to other persons due to the amendments to this rule.

F) Compliance costs for affected persons:

The amendments to this rule do not change ORS processes or procedures regarding sending income withholdings or the volume of income withholdings sent. Therefore, there are no compliance costs due to the amendments to this rule.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Human Services, Ann Silverberg Williamson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Department does not anticipate any fiscal impacts on businesses as a result of language changes throughout this rule.

B) Name and title of department head commenting on the fiscal impacts:

Ann Silverberg Williamson, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 62A-1-111	Section 62A-11-107	Section 62A-11-401
Section 62A-11- 405		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/01/2021

10. This rule change MAY become effective on: 02/08/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	10/27/2020
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R527. Human Services, Recovery Services.

R527-300. Income Withholding.

R527-300-1. Authority and Purpose.

(1)[-] The Department of Human Services is authorized to create rules necessary for the provision of social services by Sections 62A-1-111 and 62A-11-107.

(2)[-] The Office of Recovery Services (ORS) is authorized to use income withholding to collect child support by Section 62A-11-401. The purpose of this rule is to specify the responsibilities and procedures for [the Office of Recovery Services/Child Support Services for]ORS related to income withholding.

[R527-300-2. Income Withholding.

1. Income withholding is defined as withholding child support from an obligor's income. The payor of income forwards the amount withheld to the Office of Recovery Services/Child Support Services (ORS/CSS).

2. Income withholding may be initiated in a IV-D case, with concurrent notice to the obligor:

a. in a case which has an order issued prior to October 13, 1990, which has not been modified since October 13, 1990, even though the obligor is not delinquent as defined in Section 62A-11-401(6) or R527-300-3, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month, or

b. in a case which has an order issued or modified after October 13, 1990, which found a demonstration of good cause or entered a written agreement that immediate income withholding is not required, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month.]

[R527-300-3.]R527-300-2. Determining Delinquency.

(1) Delinquency occurs when:

(a) a current support has been ordered but is not presently in effect and the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month;

(b) the result of an underpayment for several months totals at least one month's current support;

(c) an obligor was ordered to pay on specific days of the month and failed to do so; or

(b) there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount was for at least one month's current support amount used to compute the judgment, income withholding may begin immediately upon entry of the judgment.

(2) Pursuant to Section 62A-11-405, orders issued prior to October 13, 1990 and not otherwise modified after that date require ORS to establish that a delinquency occurred under the order prior to utilizing income withholding.

1. If current support has been ordered but is not presently in effect; for example, the children are 18 years old, the children have been adopted, custody has changed, or the obligor is paying current support to the obligee; delinquency has occurred when the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month.

2. If there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount

NOTICES OF PROPOSED RULES

was for at least one month's current support amount used to compute the judgment, income withholding may begin immediately upon entry of the judgment.

3. A delinquency could be the result of an underpayment for several months that totals at least one month's current support.

4. A delinquency can occur prior to the end of the month if the obligor was ordered to pay on specific days of the month and failed to do so.]

[R527-300-4.]R527-300-3. Affidavit of Delinquency.

(1) The ORS verified statement or affidavit alleging that a delinquency has occurred pursuant to Section 62A-11-405 is satisfied in the following ways:

(a) for time periods when a statement of arrears was part of the child support application for services packet, [T]the Non-IV-A applicant's prepared[s-a] month-by-month computation of the support debt with an attestation[-, which is referred to as a statement of arrears. The statement of arrears is part of the application packet. As part of the statement of arrears, the applicant attests] that the statement is true and accurate to the best knowledge and belief of the applicant; or, [- This signed statement shall satisfy the verified statement requirement of Section 62A-11-405.]

(b) calculations of delinquencies provided by Title IV-D agencies in other states on incoming intergovernmental cases where the referring state requested the collection of delinquent support.

[R527-300-5. Administrative Review.

1. Section 62A-11-405(2)(b)(ii)(B) requires the obligor to file a written request for review with the office within 15 days to contest withholding. This written request for review shall state the obligor's basis for contesting the withholding.

2. If an administrative review is conducted pursuant to Section 62A-11-405(3), the notice of decision required may be mailed or delivered to the obligor in the ordinary course of business.]

[R527-300-6.]R527-300-4. Income Subject To Withholding.

(1) In accordance with Section 62A-11-406, income subject to withholding is as follows:

(a) income withholding will be limited to withholding 50% of the obligor's disposable income; or

(b) if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.

[Section 62A-11-406 limits the total amount of the income withheld for child support to the maximum permitted under Section 303(b) of the Consumer Credit Protection Act as cited in 15 U.S.C. Section 1673(b). In general, income withholding will be limited to withholding 50% of the obligor's disposable income. However, if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.]

[R527-300-7. Arrears Payments.

If the obligor owes back child support, ORS/CSS will work with the obligor in an effort to encourage timely payment of the debt by the obligor. If the obligor is unable to pay the debt in full, the office may accept monthly payments towards the back child support debt. The minimum arrears payment will be based on 10% of the current support obligation. Exceptions to the minimum arrears payment will be determined by the ORS or CSS Director.]

[R527-300-8. Modification of Withholding Amounts.

1. Once a Notice to Withhold Income for Child Support has been sent to the obligor's payor of income, any changes to the withholding amount will be made by sending the payor a modified Notice to Withhold Income for Child Support. The obligor will be provided concurrent notice of any changes.

2. If the obligor changes from one payor of income to another payor of income, a new Notice to Withhold Income for Child Support must be sent to the new payor in accordance with ORS/CSS assessment procedures.]

[R527-300-9.]R527-300-5. Income Withholding Termination.

(1)[-] Income withholding administratively initiated by ORS [should]shall be terminated if:

(a)[-] the obligor:[no longer has an obligation for current child support, and no longer has a debt to Utah or another state on whose behalf Utah is acting or to a Non-IV-A obligee on whose behalf Utah is acting;]

(i) no longer has an obligation for current child support; and

(ii) no longer has a debt to Utah or another state on whose behalf Utah is acting, or to a Non-IV-A obligee on whose behalf Utah is acting;

(b)[-] the Non-IV-A [obligee]applicant:[terminates the ORS/CSS case, income withholding was administratively implemented and the obligor no longer owes child support to Utah or other state on whose behalf Utah is acting, and the obligee does not want withholding to continue;]

(i) terminates the ORS/CSS case; and

(ii) the obligor no longer owes child support to Utah or another state on whose behalf Utah is acting; or

(c)[-] the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.

[R527-300-10. Contesting an Income Withholding Order Issued by Another State.

The Obligor may contest the validity or enforcement of an income withholding order issued by another state in this state by registering and filing a contest to that order in the appropriate Utah court.]

KEY: child support, income, wages

Date of Enactment or Last Substantive Amendment: [June 30, 2009]2021

Notice of Continuation: January 23, 2017

Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-11-107; 62A-11-401 et seq.; 62A-11-405; 62A-11-404; 62A-11-405; 62A-11-406; 62A-11-413; 62A-11-414; 78B-14-506

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-284	Filing No. 53245

Agency Information

1. Department:	Insurance
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Agency:	Administration	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N State St.	
City, state:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-284. Corporate Governance Annual Disclosure Rule
3. Purpose of the new rule or reason for the change:
This rule is being changed to bring its formatting and style in line with the Rulewriting Manual for Utah and to update the severability section.
4. Summary of the new rule or change:
All changes to the rule text are being made to meet the standards in the Rulewriting Manual for Utah. The changes are comprised of number fixes, grammatical fixes, revisions to clarify language, and other clerical improvements. It also updates the severability section to the version the Insurance Department is currently using.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes are clerical in nature and do not add or remove any requirements to this rule.
B) Local governments:
There is no anticipated cost or savings to local governments. The changes are clerical in nature and do not add or remove any requirements to this rule.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The changes are clerical in nature and do not add or remove any requirements to this rule.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings to non-small businesses. The changes are clerical in nature and do not add or remove any requirements to this rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no anticipated cost or savings to any other persons. The changes are clerical in nature and do not add or remove any requirements to this rule.

F) Compliance costs for affected persons:
There are no compliance costs for any affected persons.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:	
The Interim Commissioner of the Insurance Department, Tanji J. Northrup, has reviewed and approved this fiscal analysis.	
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:	
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.	
B) Name and title of department head commenting on the fiscal impacts:	
Tanji J. Northrup, Interim Commissioner	

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):	
Section 31A-2-201	Section 31A-16b-104

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	02/01/2021

10. This rule change MAY become effective on:	02/08/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	12/11/2020
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R590. Insurance, Administration.

R590-284. Corporate Governance Annual Disclosure Rule.

R590-284-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a), which authorizes rules to implement ~~the~~ Title 31A, Insurance Code, and Section 31A-16b-104, which authorizes rules to implement ~~the~~ Title 31A, Chapter 16b, Corporate Governance Annual Disclosure Act ~~at Title 31A, Chapter 16b~~.

R590-284-2. Purpose and Scope.

(1) This rule sets forth the filing procedures and the content requirements for the Corporate Governance Annual Disclosure (CGAD) required by Title 31A, Chapter 16b, Corporate Governance Annual Disclosure Act.

(2) This rule applies to an insurer or insurance group domiciled in Utah.

R590-284-3. Definitions.

(1) The definitions in Section 31A-1-301 apply to this rule.
 (2) "Senior Management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and includes the Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Procurement Officer, Chief Legal Officer, Chief Information Officer, Chief Technology Officer, Chief Revenue Officer, Chief Visionary Officer, or any other "C" level executive.

R590-284-4. Filing Procedures.

(1) ~~The~~ An insurer or insurance group has discretion regarding the appropriate format for providing the information required by these regulations ~~[-The insurer or insurance group has discretion to]~~ and may customize the CGAD to provide the most relevant information necessary to permit the commissioner to gain an understanding of the corporate governance structure, policies, and practices utilized by the insurer or insurance group.

(2)(a) An insurer or insurance group may comply with this rule by referencing any other existing document[s], for example, an ORSA Summary Report, a Holding Company Form B or F Filing[s], a Securities and Exchange Commission Proxy Statement[s], or foreign regulatory reporting requirements, if the document[s] provides information that is comparable to the information described in Section R590-284-5.

(b) ~~The~~ An insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the regulator.

(3)(a) Each year following the initial filing of the CGAD, ~~the~~ an insurer or insurance group shall file an amended version of the previously filed CGAD indicating where any change[s] ~~have~~ has been made.

(b) If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

R590-284-5. Contents of the CGAD.

(1) ~~The~~ An insurer or insurance group shall be as descriptive as possible in completing the CGAD ~~[-with inclusion of]~~ and should include any attachment[s] or example document[s] that ~~are~~ is used in the governance process ~~[-]~~ because these may provide a means to demonstrate the strengths of ~~their~~ the insurer's or insurance group's governance framework and practices.

(2) The CGAD shall describe ~~the~~ an insurer's or insurance group's corporate governance framework and structure including consideration of the following~~[-]~~:

(a) ~~[F]~~ the insurer's board of directors (Board) and its various committees that are ultimately responsible for overseeing the insurer or insurance group and the level~~(s)~~ or levels at which that oversight occurs, for example, ultimate control level, intermediate holding company, or legal entity~~[-]~~ ~~[-The insurer or insurance group shall describe and discuss]~~ and a description and discussion of the rationale for the current Board size and structure; and

(b) ~~[F]~~ the duties of the Board and each of its significant committees and how they are governed, for example bylaws, charters, or informal mandates, as well as how the Board's leadership is structured, including a discussion of the roles of Chief Executive Officer (CEO) and Chairman of the Board within the organization.

(3) ~~The~~ An insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following:

(a) how the qualifications, expertise, and experience of each Board member meet the needs of the insurer or insurance group;

(b) how an appropriate amount of independence is maintained on the Board and its significant committees;

(c) the number of meetings held by the Board and its significant committees over the past year, as well as information on director attendance;

(d) how the insurer or insurance group identifies, nominates, and elects members to the Board and its committees including, for example:

(i) whether a nomination committee is in place to identify and select individuals for consideration;

(ii) whether term limits are placed on directors;

(iii) how the election and re-election processes function;

and

(iv) whether a Board diversity policy is in place and if so, how it functions; and

(e) the processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any Board or committee training programs~~[that have been put in place]~~.

(4) ~~The~~ An insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:

(a) any process~~(es)~~ [es] or practice~~(s)~~ [s], for example, suitability standards, used to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfill their prospective roles, including:

(i) identification of ~~the~~ each specific position~~(s)~~ [s] for which suitability standards have been developed and a description of the standards employed~~[-]~~; and

(ii) any change~~(s)~~ [s] in an officer's or key person's suitability as outlined by the insurer's or insurance ~~[-]~~ group's standards and procedures to monitor and evaluate such changes;

(b) the insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

(i) compliance with laws, rules, and regulations; and

(ii) proactive reporting of any illegal or unethical behavior;

(c) the insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization, including a description of:

(i) the general objectives of any significant compensation program~~(s)~~ [s];

(ii) what ~~the~~ each program~~(s-are-)~~ is designed to reward; and

(iii) how the organization ensures that a compensation program~~(s)~~ does not encourage and/or reward excessive risk taking, including a discussion of:

(A) the Board's role in overseeing management compensation programs and practices;

(B) the various elements of compensation awarded in ~~the insurer's or insurance group's~~ each compensation program~~(s)~~ [s] and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;

(C) how each compensation program~~(s-are-)~~ is related to both company and individual performance over time;

(D) whether each compensation program~~(s)~~ [s] includes risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(E) any clawback provision~~(s)~~ [s] built into ~~the~~ a compensation program~~(s)~~ [s] to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and

(F) any other factor~~(s)~~ [s] relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees; and

(d) the insurer's or insurance group's plans for CEO and Senior Management succession.

(5)(a) ~~The~~ An insurer or insurance group shall describe ~~the~~ any process~~(es)~~ [es] by which the Board, its committees, and Senior Management ensure an appropriate amount of oversight to ~~the~~ each critical risk area~~(s)~~ [s] impacting the insurer's business activities, including a discussion of:

(~~a~~) (i) ~~H~~ H how oversight and management responsibilities are delegated between the Board, its committees, and Senior Management;

(~~b~~) (ii) ~~H~~ H how the Board is kept informed of the insurer's or insurance group's strategic plans, the associated risks, and steps that Senior Management ~~[is taking]~~ may take to monitor and manage those risks; and

(~~e~~) (iii) ~~H~~ H how reporting responsibilities are organized for each critical risk area.

(~~i~~) (b) The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by Senior Management and the Board.

(~~ii~~) (c) The ~~is~~ [is] description may include, for example, the following critical risk areas of the insurer:

(A) risk management processes, such as an ORSA Summary Report pursuant to Title 31A, Chapter 16a, Risk Management and Own Risk and Solvency Assessment Act;

(B) actuarial function;

(C) investment decision-making processes;

(D) reinsurance decision-making processes;

(E) business strategy/finance decision-making processes;

(F) compliance function;

(G) financial reporting/internal auditing; and

(H) market conduct decision-making processes.

R590-284-6. Severability.

~~If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any~~

NOTICES OF PROPOSED RULES

other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.]If any provision of this rule, R590-284, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: corporate governance disclosure

Date of Enactment or Last Substantive Amendment:
2021~~[March 10, 2020]~~

**Authorizing, and Implemented or Interpreted Law: 31A-2-201;
31A-16b-104**

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that 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.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text (~~example~~). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, 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 of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R357-37	Filing No. 53255

Agency Information

1. Department:	Governor	
Agency:	Economic Development	
Building:	World Trade Center	
Street address:	60 E South Temple	
City, state, zip:	Salt Lake City, UT 84111	
Mailing address:	60 E South Temple	
City, state, zip:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	Phone:	Email:
Dane Ishihara	801-538-8664	dishihara@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R357-37. COVID-19 Live Events Grant Program Rule
3. Effective Date:
12/14/2020
4. Purpose of the new rule or reason for the change:
The purpose of this rule filing is to create the COVID-19 Live Events Grant Program to support small businesses and the retention of jobs throughout the state during the state of emergency due to novel coronavirus disease 2019 (COVID-19).
5. Summary of the new rule or change:
This rule will codify the administration of the COVID-19 Live Events Grant Program by establishing definitions, authority, program, and documentation requirements. The program will provide assistance to live event promotion businesses that have been impacted by the COVID-19 pandemic.

6. Regular rulemaking would:	
X	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
	place the agency in violation of federal or state law.
Specific reason and justification:	
The Governor's Office of Economic Development (GOED) is responsible for economic development in the state and is tasked with, among other things, administering grant programs to enhance the economic health and vitality of the state and its business community. This rule will govern the new COVID-19 Live Events Grant Program that will provide assistance to the live event promotion industry.	

Fiscal Information

7. Aggregate anticipated cost or savings to:	
A) State budget:	
There is no aggregate anticipated cost or savings to the state budget. This rule establishes the requirements for participation in the COVID-19 Live Events Grant Program.	
B) Local governments:	
There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.	
C) Small businesses ("small business" means a business employing 1-49 persons):	
Three million dollars in funds were allocated towards this program. GOED anticipates a large portion will be awarded to small businesses in the state. The COVID-19 Live Events Grant Program is designed to serve Utah's businesses that have been impacted by the COVID-19 pandemic.	
D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):	
There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed rule does not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation.	
8. Compliance costs for affected persons:	
There are no compliance costs for affected persons because participation in the program is optional.	

9. A) Comments by the department head on the fiscal impact this rule may have on businesses:
I have reviewed this fiscal analysis and agree with the described fiscal impacts associated with this rule. Live events are an important part of Utah's culture, and GOED hopes this grant will help many of these businesses.
B) Name and title of department head commenting on the fiscal impacts:
Val Hale, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 63N-1-402	Section 63N-1-203	

Agency Authorization Information

Agency head or designee, and title:	Val Hale, Executive Director	Date:	12/14/2020
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R357. Governor, Economic Development.

R357-37. COVID-19 Live Events Grant Program Rule.

R357-37-101. Title.

_____ This rule is known as the "COVID-19 Live Events Grant Program Rule."

R357-37-102. Definitions.

_____ The following terms are defined:

_____ (1) "Awardee" means a qualified business entity that has been awarded a grant under the program.

_____ (2) "Full-time equivalent employee" means any person that on average works 40 or more hours per week on behalf of the business entity in Utah.

_____ (3) "Profit & loss or equivalent financial statement" means official documents that, at a minimum, establish:

- _____ (a) the business entity's name;
- _____ (b) the timeframe the document represents;
- _____ (c) gross revenue;
- _____ (d) expenses; and
- _____ (e) net income.

R357-37-103. Authority.

_____ This rule is adopted by the office under the authority of Sections 63N-1-203 and 63N-1-402.

R357-37-104. Documentation Requirements.

_____ (1) An applicant shall submit to the office a:

- _____ (a) signed W-9 form;
- _____ (b) profit & loss or equivalent financial statement for;

- (i) March 1, 2019 through November 30, 2019 if the business entity began operating prior to July 1, 2019; or
- (ii) July 1, 2019 through March 31, 2020 if the business entity began operating on or after July 1, 2019; and
- (c) profit & loss or equivalent financial statement for March 1, 2020 through November 30, 2020.

R357-37-105. Program Requirements.

- (1) The office will not issue a grant until all required information and documentation is submitted and approved, as determined by the office. Only complete applications will be considered submitted.
- (2) To qualify for a grant, applicants shall, at a minimum:
 - (a) be substantially involved in the promotion of performing arts, sports, or similar events as determined by the office;
 - (b) have experienced a Utah revenue decline related to COVID-19;
 - (c) have employees physically located in Utah;
 - (d) have fewer than 250 full-time equivalent employees;
 - (e) establish that the use of funds will benefit Utah's economy;
 - (f) verify grant funds will be spent before Dec. 30, 2020;
 - (g) follow best practices to protect the health and safety of employees and customers;

- (h) submit to audits and information requests as reasonably requested by GOED or its designee; and
- (i) be a for-profit or non-profit business entity properly registered with the Utah Division of Corporations and Commercial Code; or
- (ii) a sole proprietor whose primary place of business is located in Utah.
- (3) Submitting an application does not guarantee funding.

R357-34-106. Maximum Award Calculation.

- (1) For a business entity whose revenue decline was:
 - (a) 50% or more, the lesser of 75% of revenue decline or \$150,000;
 - (b) more than 25% but less than 50%, the lesser of 50% of revenue decline or \$100,000; or
 - (c) 25% or less, the lesser of 25% of revenue decline or \$50,000.

KEY: Live Events Grant, COVID-19 assistance

Date of Enactment or Last Substantive Amendment: December 14, 2020

Authorizing, and Implemented or Interpreted Law: 63N-1-203 and 63N-1-402

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 help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R154-2	Filing No. 50246

Agency Information

1. Department:	Commerce	
Agency:	Corporations and Commercial Code	
Building:	Heber M Wells Bldg	
Street address:	160 E 300 S	
City, state, zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO BOX 146705	
City, state, zip:	Salt Lake City, UT 84114-6705	
Contact person(s):		
Name:	Phone:	Email:
Jason Sterzer	801-530-6403	jsterzer@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R154-2. Utah Uniform Commercial Code, Revised Article 9 Rules
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 70A, Chapter 9a, directs the Division of Corporations and Commercial Code (Division) to publish and implement rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received from either those supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
As long as it is required or authorized by statute, the Division continue to renew the rule. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jason Sterzer, Director	Date:	12/10/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R384-415	Filing No. 50903

Agency Information

1. Department:	Health
Agency:	Disease Control and Prevention, Health Promotion
Building:	Cannon Health Building
Street address:	288 N 1460 W
City, state, zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 142106
City, state, zip:	Salt Lake City, UT 84114-2106

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Contact person(s):		
Name:	Phone:	Email:
Braden Ainsworth	801-538-6187	bainsworth@utah.gov
Christy Cushing	801-538-6260	ccushing@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R384-415. Electronic-Cigarette Substance Standards
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This administrative rule is mandated by Section 26-57-103 due to the passage of H.B. 415 during the 2015 General Session, requiring the Department of Health (Department) to establish labeling; nicotine content; packaging; and product quality standards for non-manufacturer sealed electronic cigarette substances.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received supporting or opposing this rule in the last five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Section 26-57-103 requires the continuation of this rule and the passage of S.B. 37, passed during the 2020 General Session, funds the enforcement of this rule by Utah's 13 local health departments. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Richard G. Saunders, Interim Executive Director	Date:	12/08/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
Utah Admin. Code Ref (R no.):	R456-1	Filing No.	51136

Agency Information

1. Department:	Heritage and Arts
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Agency:	Indian Affairs	
Room no.:	Suite A	
Building:	Utah State Library	
Street address:	250 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Josh Loftin	801-245-7205	jloftin@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R456-1. Native American Grave Protection and Repatriation
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Sections 9-9-403 and 9-9-405, the Native American Grave Protection and Repatriation Act, and Subsection 9-9-104(2)(c).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The continuation of this rule is justified because of agreements with tribes and federal rules that require the proper protection of graves and repatriation of remains as detailed in Sections 9-9-403 and 9-9-405.

Agency Authorization Information

Agency head or designee, and title:	Josh Loftin, Public Information Officer	Date:	12/04/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
Utah Admin. Code Ref (R no.):	R523-1	Filing No.	51242

Agency Information

1. Department:	Human Services
Agency:	Substance Abuse and Mental Health

Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R523-1. General Provisions
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was established to set policy for its operation and for programs funded with state and federal money under Sections 17-43-201, 17-43-301, 17-43-304, and 62A-15-110 as granted by Section 62A-15-105.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments relating to this rule have been received over the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule needs to continue because it establishes the overall standards on which all publicly funded behavioral health programs must build their services in order to receive continues federal, and state general funds for providing substance use and mental health services. This rule also binds subcontractors to the standards set on the local authorities that receive public behavioral health funds.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R523-2	Filing No. 51243

Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R523-2. Local Mental Health Authorities and Local Substance Abuse Authorities
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule provides overall guidance and procedures for the funding and programing requirements place on the local behavioral health authorities by the Division of Substance Abuse and Mental Health by as required in Section 62A-15-105, and Subsections 62A-15-108(1), 62A-15-611(2)(a), and 62A-15-902(2)(c).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments relating to this rule have been received over the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule needs to continue because it provides a large range of guidance to the publicly funded behavioral health provider network ran by the 29 counties that are contracted by the state to receive behavioral health federal and state funds. These directions include:

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

(a) Guidance on the priorities for treatment services.
 (b) Guidance on the rights of individuals participating in services.
 (c) A process for Local Mental Health Authorities (LMHAs) and Local Substance Abuse Authorities (LSAAs) to set policies on fees for service.
 (d) Guidance on LMHA/LSAA program standards.
 (e) Guidance on the formula for allocation of funding.
 (f) Guidance on allocation of Utah State Hospital (Hospital) beds to LMHAs.
 (g) Guidance on admission to the Hospital and coordination of care.
 (h) Guidance on determining the proper LMHA under special situations.
 (i) Guidance on transfer planning between LMHAs from the Hospital.
 (j) Guidance on conflict resolution.
 (k) Guidance on prohibited items and devices on the grounds of public mental health facilities.

A large review of this rule started in FY2020, and a major revision is in the process of being submitted to the Office of Administrative Rules for public comment.
 (EDITOR'S NOTE: The proposed amendment to Rule R523-2 is under Filing No. 53225 in this issue, January 1, 2021, of the Bulletin.)

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/08/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R523-3	Filing No. 51245

Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
 R523-3. Screening, Assessment, Education and Treatment Standards for Court-referred Youth Under the Age of 21

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by Subsection 62A-15-105(6) requiring the Division of Substance Abuse and Mental Health (Division) to provide form and content of screening, assessment, education, and treatment as defined in Section 41-6a-501.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments relating to this rule have been received over the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule needs to continue because it is required by statute, and provides the standards for substance use disorder screening, assessment, treatment, and required educational series for court-referred youth under the age of 21 and sets forth the certification and documentation requirements of agencies certified by the Division as youth educational series and treatment programs.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R523-4	Filing No. 52826

Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	

Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R523-4. Certification Requirements for Screening, Assessment, Prevention, Treatment and Recovery Support Programs for Adults
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Subsections 62A-15-103(2)(i) and 62A-15-103(2)(j) requiring the Division of Substance Abuse and Mental Health to establish by rule, minimum standards and requirements for the provision of substance use disorder and mental health treatment for adults required to participate in treatment by the court or the Board of Pardons and Parole.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments relating to this rule have been received over the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule needs to continue because it is required by statute and prescribes the minimum standards required for justice certification of mental health and substance use disorder providers serving adults participating in mandatory education and treatment programs designed to reduce criminogenic risk. Also, an amendment to this rule was completed in FY 2021, and the amended rule was made effective on 08/13/2020.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R523-5	Filing No. 51254

Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R523-5. Peer Support Specialist Training and Certification
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health and currently state authorization by Subsection 62A-15-103(2)(v), which is technically correct, but an amendment needs to be made to add Subsection 62A-15-103(h), which mandates rulemaking specifically for peer support services.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments relating to this rule have been received over the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule needs to continue because it is required by statute, prescribes standards for certification of Peer Support Specialist Training programs, the qualifications required of instructors for providing Peer Support training, the requirements to become a Peer Support Specialist, and establishes guidelines for population specific peer support services. These services are integral to the treatment of behavioral health disorders within the Utah public behavioral health network and are conducted by individuals with lived experiences that might not have had formal education in the behavioral health field. These standards and requirements help to ensure individuals

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

receiving peer support services are able to obtain proper and effective interventions.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R523-6	Filing No. 51250

Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
R523-6. Child/Family Peer Support Specialist Training and Certification
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health, and currently state authorization through Section 62A-15-402, which is incorrect due to changes in the statute over the years since the last review of this rule. An amendment needs to be made to replace the stated authority with Subsection 62A-15-103(h), which mandates rulemaking specifically for peer support services.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments relating to this rule have been received over the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule needs to continue because it is required by statute and prescribes standards for certification of Peer Support Specialist Training programs, the qualifications required of instructors for providing Peer Support training, the requirements to become a Child/Family Peer Support Specialist, and establishes guidelines for population specific Child/Family Peer Support Specialist services. These services are integral to the treatment of behavioral health disorders within the Utah public behavioral health network and are conducted by individuals with lived experiences that might not have had formal education in the behavioral health field. These standards and requirements help to ensure individuals receiving peer support services are able to obtain proper and effective interventions.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R523-7	Filing No. 51249

Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
R523-7. Certification of Designated Examiners and Certified Case Managers
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is promulgated under authority of Subsection 62A-15-105(2).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments relating to this rule have been received over the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule needs to continue because it establishes certification, scope of practice and professional conduct requirements for both Designated Examiners and Case managers in the publicly funded behavioral health network. Both of these positions/services are critical to the overall treatment continuum of care for individuals in substance use and mental health treatment settings. Designated Examiners are used to determine the need for commitment in the behavioral health network, and case managers provide a large array of supportive services that cannot be and are not billable under treatment for a behavioral health issue. This rule does need to be updated because the citation for the definition of a designated examiner needs to change from Subsection 62A-15-603(3) to Subsection 62A-15-602(6).

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R523-8	Filing No. 51251

Agency Information

1. Department:	Human Services
Agency:	Substance Abuse and Mental Health
Room no.:	Second Floor
Building:	Multi Agency State Office Building
Street address:	195 N 1950 W
City, state, zip:	Salt Lake City, UT 84116

Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R523-8. Medication, Psychosurgery and Electroshock Procedures for Children, Consumer Rights, Due Process, Family Involvement
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was established under authority of Section 62A-15-105.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments relating to this rule have been received over the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule needs to continue because it establishes guidance on medication procedures for children, psychosurgery and electroshock therapy procedures for children, family involvement in services provided to children, and on consumer rights. These particular topics are highly controversial and have long reaching effects on the child and family seeking mental health services, as well as society in general. This rule helps to ensure that publicly funded mental health agencies provided extreme interventions in a competent, ethical, and informed manner, having weighed all the cost to life and liberty for children who have no consent for themselves, and ensure that families are fully informed on the procedure and possible outcomes.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R523-9	Filing No. 51253

Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R523-9. Evidence-Based Prevention Registry
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was established by the Division of Substance Abuse and Mental Health (DSAMH) as authorized by Subsection 32B-2-402(1)(f).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments relating to this rule have been received over the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule needs to continue because it is required by statute, establishes the required definition of evidence-based, and evidence-informed prevention. It also prescribes standards for listing a prevention program or intervention on a statewide registry of evidence-based prevention programs. These standards allow programing to expand and become more effective as research and practices are refined.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R523-10	Filing No. 51260

Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R523-10. Standards for Methadone Addiction Treatment Providers
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was established to set standards for providers of methadone and other opioid treatment medication services by authority granted in Subsection 62A-15-105(5).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments relating to this rule have been received over the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule needs to continue because it is mandated by statute and defines the program standards for critical

medication assisted management programs that are vital in providing treatment to individuals with an opioid use disorder.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R523-11	Filing No. 51265

Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R523-11. Utah Standards for Approval of Alcohol and Drug Educational Providers and Instructors for Court-Referred DUI Offenders
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule established an educational series for individuals convicted of Driving Under the Influence (DUI) as required by Subsections 62A-15-105(6) and 62A-15-103(2)(x).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments relating to this rule have been received over the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule needs to continue because it is required by statute and standards for approval of Providers and certification of Instructors for providing alcohol and drug education to court-referred offenders convicted of a (DUI) violation, to ensure statewide continuity in services provided.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R523-12	Filing No. 51256

Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R523-12. On-Premise Alcohol Training and Education Seminar Rules of Administration
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was established under the authority of Subsection 62A-15-401(5) to administer an alcohol training and education seminar program for individuals who sell alcohol for on premise consumption.

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments relating to this rule have been received over the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule needs to continue because it is required by statute, requires every person who sells or furnishes alcoholic beverages to the public for on-premise consumption to complete a training seminar in the scope of the person's employment, defines certification of providers, approval of the seminar curriculum, the ongoing activities of providers, and the process for approval, denial, suspension, and revocation of provider certification.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R523-13	Filing No. 51258
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Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R523-13. Off-Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule was established by Subsection 62A-15-40192)(f) for the purpose of administering an alcohol training and education seminar program for individuals who sell alcohol for off premise consumption.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments relating to this rule have been received over the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule needs to continue because it is required by statute, requires every person who sells or furnishes alcoholic beverages to the public for off-premise consumption to complete a training seminar in the scope of the person's employment, defines certification of providers, approval of the seminar curriculum, the ongoing activities of providers, and the process for approval, denial, suspension, and revocation of provider certification.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R523-14	Filing No. 51255
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Agency Information

1. Department:	Human Services	
Agency:	Substance Abuse and Mental Health	
Room no.:	Second Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Thom Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:

R523-14. Suicide Prevention

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule states authority through Subsection 62A-15-1101(8), but changes in statute has moved the rulewriting authority to Subsection 62A-15-1101(7) to implement a statewide suicide prevention program. An update to this rule will be required.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments relating to this rule have been received over the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule needs to continue because it is required by statute and sets forth the creation and function of the Utah Suicide Prevention Coalition and the Utah Behavioral Health Planning and Advisory Council.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	12/07/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R527-200	Filing No. 51288
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Agency Information

1. Department:	Human Services	
Agency:	Recovery Services	
Street address:	515 E 100 S	
City, state, zip:	Salt Lake City, UT 84102-4211	
Mailing address:	PO Box 45033	
City, state, zip:	Salt Lake City, UT 84145-0033	
Contact person(s):		
Name:	Phone:	Email:
Scott Weight	801-741-7435	sweigh2@utah.gov

Casey Cole	801-741-7523	cacole@utah.gov
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:

R527-200. Administrative Procedures

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 62A-11-107 authorizes the Office of Recovery Services (ORS) to adopt, amend, and enforce rules as may be necessary to carry out its legal responsibilities outlined in Title 62A, Chapter 11. Section 63G-4-203 requires ORS to implement, by administrative rule, procedures to perform informal adjudicative proceedings. This rule also outlines the procedures for reconsideration in accordance with Section 63G-4-302.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no comments received since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The statutes under which this rule was enacted are still in effect. This rule is necessary to provide the procedures for informal adjudicative proceedings conducted by ORS, which includes sections on who presides over the hearing, service of notices of agency action, hearings, telephonic hearings, how to conduct the hearings, and agency review. This rule also provides information about reconsideration, while also limiting reconsideration to only one request during an informal adjudicative proceeding. There is also additional information about setting aside and amending administrative orders, both establishment and paternity orders. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Liesa Stockdale, ORS Director	Date:	11/24/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R527-250	Filing No. 51293
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Agency Information

1. Department:	Human Services	
Agency:	Recovery Services	
Street address:	515 E 100 S	
City, state, zip:	Salt Lake City, UT 84102-4211	
Mailing address:	PO Box 45033	
City, state, zip:	Salt Lake City, UT 84145-0033	
Contact person(s):		
Name:	Phone:	Email:
Scott Weight	801-741-7435	sweigh2@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R527-250. Emancipation
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 62A-11-107 authorizes the Office of Recovery Services (ORS) to adopt, amend, and enforce administrative rules. This rule was enacted to clarify language found in Section 78B-12-219 to define a "child's normal and expected year of graduation" as it applies to emancipation in relation to child support. Sections 62A-11-303, 62A-11-401, and 78B-12-102 all provide definitions for terms used in this rule such as child, child support, child support order, and parent.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have been no comments received since the implementation of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The statutes under which this rule was enacted are still in effect and this rule is necessary to provide ORS employees guidance on making a determination of a child's date of emancipation. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Liesa Stockdale, ORS Director	Date:	11/24/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R590-233	Filing No. 51413
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Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N State St	
City, state, zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R590-233. Health Benefit Plan Insurance Standards
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 31A-2-201(3)(a) authorizes rules to implement Title 31A, Insurance Code. Sections 31A-2-202 and 31A-23a-412 authorize the Insurance Commissioner to request reports, conduct examinations, and inspect records of any licensee. Subsection 31A-22-605(4) requires the Insurance Commissioner to adopt rules to establish standards for disclosure in the sale of, and benefits to be provided by, individual and franchise accident and health policies. Section 31A-22-623 authorizes the Insurance Commissioner to establish by rule minimum standards of coverage for dietary products for inborn metabolic errors. Section 31A-22-626 authorizes the Insurance Commissioner to establish by rule minimum standards of coverage for diabetes for accident and health insurance. Subsection 31A-23a-402(8) authorizes the Insurance Commissioner to define by rule acts and practices that are unfair and unreasonable. Subsection 31A-26-301(a) authorizes the Insurance Commissioner to set standards for timely payment of claims.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department of Insurance has received no written comments regarding this rule during the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies to facilitate public understanding and comparison, and to prohibit provisions that may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	12/03/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R623-4	Filing No. 51516
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Agency Information

1. Department:	Lieutenant Governor	
Agency:	Elections	
Room no.:	Suite 220	
Building:	Utah State Capitol	
Street address:	350 N State Street	
City, state, zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 142325	
City, state, zip:	Salt Lake City, UT 84114-2325	
Contact person(s):		
Name:	Phone:	Email:
Justin Lee	801-538-1129	justinlee@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R623-4. Processing Partisan Candidate Nomination Petitions

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is required by Subsection 20A-9-403(3)(f) and Section 20A-9-410. This rule provides for the transparent orderly, and timely submission, verification, and certification of nomination petition signatures.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required by law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Justin Lee, Director of Elections	Date:	12/10/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R652-2	Filing No. 51686
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Agency Information

1. Department:	Natural Resources	
Agency:	Forestry, Fire and State Lands	
Room no.:	352	
Building:	DNR	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 145703	
City, state, zip:	Salt Lake City, UT 84114-5703	
Contact person(s):		
Name:	Phone:	Email:
Brianne Emery	385-239-0791	brianneemery@utah.gov
Jamie Barnes	385-222-1536	jamiebarnes@utah.gov
Please address questions regarding information on this notice to the agency.		

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

General Information

2. Rule catchline:
R652-2. Sovereign Lands Management Objectives
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule implements Sections 65A-1-2 and 65A-10-1 which authorize the Division of Forestry, Fire and State Lands to prescribe the general land management objectives for sovereign lands.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule gives the Division of Forestry, Fire and State Lands the authority to prescribe land management objectives for sovereign lands within the state. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Brian Cottam, Director	Date:	12/10/2020
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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 administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food

Plant Industry

No. 53103 (Amendment) R68-29: Quality Assurance Testing on Cannabis
Published: 11/01/2020
Effective: 12/18/2020

No. 53110 (New Rule) R68-32: Sale and Transfer of Industrial Hemp Waste Material to Medical Cannabis Cultivators
Published: 11/01/2020
Effective: 12/18/2020

Commerce

Occupational and Professional Licensing

No. 53108 (Amendment) R156-11a: Cosmetology and Associated Professions Licensing Act Rule
Published: 11/01/2020
Effective: 12/17/2020

No. 53102 (Amendment) R156-46a: Hearing Instrument Specialist Licensing Act Rule
Published: 11/01/2020
Effective: 12/10/2020

No. 53162 (Repeal) R156-82: Electronic Prescribing Act Rule
Published: 11/15/2020
Effective: 12/24/2020

Education

Administration

No. 53111 (Amendment) R277-462: School Counseling Program
Published: 11/01/2020
Effective: 12/16/2020

No. 53112 (Amendment) R277-494: Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities
Published: 11/01/2020
Effective: 12/16/2020

No. 53107 (Repeal) R277-508: Employment of Substitute Teachers
Published: 11/01/2020
Effective: 12/16/2020

No. 53113 (Repeal) R277-611: Certified Volunteer Instructors and Material Approval Requirements and Process for Firearm Safety in the Public Schools
Published: 11/01/2020
Effective: 12/16/2020

No. 53114 (Amendment) R277-616: Education for Homeless and Emancipated Students
Published: 11/01/2020
Effective: 12/16/2020

No. 53106 (Amendment) R277-706: Public Education Regional Service Centers
Published: 11/01/2020
Effective: 12/16/2020

No. 53109 (Amendment) R277-752: Special Education Intensive Services Fund
Published: 11/01/2020
Effective: 12/16/2020

Environmental Quality

Air Quality

No. 53056 (Amendment) R307-110-17: Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits
Published: 10/01/2020
Effective: 12/03/2020

NOTICES OF RULE EFFECTIVE DATES

Water Quality

No. 53043 (Amendment) R317-2: Standards of Quality for Waters of the State
Published: 09/15/2020
Effective: 12/03/2020

Health

Disease Control and Prevention, Environmental Services
No. 53095 (New Rule) R392-105: Agritourism Food Establishment Sanitation
Published: 10/15/2020
Effective: 12/21/2020

Health Care Financing, Coverage and Reimbursement Policy
No. 53161 (Amendment) R414-49: Dental, Oral and Maxillofacial Surgeons and Orthodontia
Published: 11/15/2020
Effective: 01/01/2021

Insurance

Administration
No. 53178 (Amendment) R590-281: License Applications Submitted by Individuals Who Have a Criminal Conviction
Published: 11/15/2020
Effective: 12/23/2020

Lieutenant Governor

Elections
No. 52996 (Amendment) R623-4: Processing Partisan Candidate Nomination Petitions
Published: 10/15/2020
Effective: 12/08/2020

Natural Resources

Wildlife Resources
No. 53118 (Repeal) R657-48: Wildlife Sensitive Species
Published: 11/15/2020
Effective: 12/23/2020

Navajo Trust Fund

Trustees
No. 53000 (New Rule) R661-21: Electronic Meetings
Published: 08/15/2020
Effective: 12/08/2020

No. 53001 (New Rule) R661-23: Adult Education Program GED Financial Aid
Published: 08/15/2020
Effective: 12/08/2020

Public Service Commission

Administration
No. 53104 (New Rule) R746-315: Wildland Fire Protection Plans
Published: 11/01/2020
Effective: 12/09/2020

System of Technical Colleges (Utah)

Southwest Technical College
No. 52994 (Amendment) R957-1: Student Due Process
Published: 08/15/2020
Effective: 12/09/2020

Tax Commission

Auditing
No. 53093 (Amendment) R865-19S-12: Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118
Published: 10/15/2020
Effective: 11/30/2020

Motor Vehicle
No. 53062 (Amendment) R873-22M-34: Rule for Denial of Personalized Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411
Published: 10/15/2020
Effective: 11/30/2020

Property Tax

No. 53092 (Amendment) R884-24P-53: 2020 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act
Published: 10/15/2020
Effective: 11/30/2020

Transportation

Administration
No. 53088 (Amendment) R907-80: Disposition of Surplus Land
Published: 10/15/2020
Effective: 12/01/2020

Operations, Traffic and Safety
No. 53061 (Amendment) R920-8: Flashing Light Usage on Highway Construction or Maintenance Vehicles
Published: 10/01/2020
Effective: 12/16/2020

End of the Notices of Rule Effective Dates Section