R68. Agriculture and Food, Plant Industry.
R68-8. Utah Seed Law.
R68-8-1. Authority.

Promulgated under authority of Sections 4-2-2, 4-16-3 and 4-17-3.

R68-8-2. Noxious Weed Seeds and Weed Seed Restrictions.

It shall be unlawful for any person, firm, or corporation to sell, offer, or expose for sale or distribute in the State of Utah any agricultural, vegetable, flower, tree and shrub seeds, or seeds for sprouting for seeding purposes which:

A. Contain, either in part or in whole, any prohibited noxious weed seeds.

1. "Prohibited" noxious weed seeds are the seeds of any plant determined by Utah Commissioner of Agriculture and Food to be injurious to public health, crops, livestock, land, or other property and which is especially troublesome and difficult to control.

2. Utah prohibited noxious weed seeds are as follows:

TABLE

Bermudagrass (Except in Washington County)	Cynodon dactylon (L.) Pers.
Bindweed (Wild Morning-glory)	Convolvulus spp.
Broad-leaved Peppergrass (Tall Whitetop)	Lepidium latifolium L.
Canada Thistle	Cirsium arvense (L.) Scop.
Diffuse Knapweed	Centaurea diffusa (Lam.)
Dyers Woad	Isatis Tinctoria L.
Perennial Sorghum spp.	including but not limited to Johnson Grass (Sorghum halepense (L.) Pers.) and Sorghum Almum (Sorghum almum, Parodi).
Leafy Spurge	Euphorbia esula L.
Medusahead	Taeniatherum caput-medusae (L.) Nevski)
Musk Thistle	Carduus nutans L.
Purple Loosestrife	Lythrum salicaria L.
Quackgrass	Agropyron repens (L.) Beauv.
Russian Knapweed	Centaurea repens L.
Scotch Thistle (Cotton Thistle)	Onopordum acanthium L.
Spotted Knapweed	Centaurea maculosa Lam.
Squarrose Knapweed	Centaurea virgata Lam. Ssp squarrosa Gugle.
Whitetop	Cardaria spp.
Yellow Starthistle	Centaurea solstitialis L.

B. Contain any restricted weed seeds in excess of allowable amounts:

1. The following weed seeds shall be allowed in all crop seed, but shall be restricted not to exceed a maximum of 27 such seeds per pound, either as a single species or in combination:

TABLE

Dodder	Cuscuta app.
Halogeton	Halogeton glomeratus (M. Bieb.)
Jointed goatgrass	Aegilops cylindrica (Host.)
Poverty Weed	Iva axillaris Pursh.
Wild Oats	Avena fatua L.

2. The following maximum percentage of weed seeds by weight shall be allowed:

a. Two percent (2.0%) of Cheat (Bromus secalinus), Chess (Bromus brizaformis), (B. commutatus), (B. mollis), Japanese Brome (Bromus japonicus) and Downy Brome (Bromus tectorum) either as a single species or in combination in grass seeds.

b. One percent (1.0%) of any weed seeds not listed in 2.a. above in grass, flower, tree and shrub seeds.

c. One half of one percent (0.50%) in all other kinds or types of seeds.

R68-8-3. Special Labeling Provisions.

A. Prepackaged containers must be labeled in accordance with requirements applying to the specific kind(s) of seed in said prepackaged container as provided by Section 4-16-4.

B. Seed weighed from bulk containers, including jars, cans, bins, etc., in the presence of the customer and sold in quantities of five pounds or less will be exempt from the full labeling provisions; provided, that the container from which the seed is taken is fully and properly labeled in accordance with the provisions of the law and regulations thereunder. Labels on such seed containers must be attached thereto and must be kept in a conspicuous place. The name and address of the supplier or vendor must be plainly printed on all lots of seed sold from bulk containers along with the required labeling and name of substance used in treatment, if any. If the seed was treated, the appropriate treatment labeling must be on both the master container from which the seed is weighed and on each receiving container. The vendor must also mark on any receiving container, when requested by the purchaser, any additional labeling information required by the laws and regulations thereunder.

C. If responsibility is accepted therefore, it shall be permissible under the law for the local merchant or distributor of seed in this State to adopt and use the analysis furnished by the original seller to remain attached to the proper container of such seed for a period not to exceed nine calendar months for vegetable, flower, tree, and shrub seeds and eighteen calendar months for agricultural seeds or in the case of hermetically sealed seed, thirty-six calendar months, after which time said local dealer or distributor must retest or have retested any remaining seed in his possession, remove the original analysis label and attach a new analysis label or place an appropriately printed permanently adhering sticker on the original label bearing the lot number, percent of germination and date of test.

D. Any vegetable or flower seeds in packets or containers of one pound or less and preplanted containers offered, exposed for sale, or distributed in the State of Utah, must be labeled with the date of test or the current calendar year for which the seed is packed.

R68-8-4. Treated Seed - Use of Highly Toxic, Moderately Toxic, and Low Toxicity Substances and Labeling of Containers.

Any agricultural, vegetable, flower, or tree and shrub seed or mixture thereof that has been treated, shall be labeled in type no smaller than eight point to indicate that such seed has been treated and to show the name of any substance or a description of any process (other than application of a substance) used to treat such seed. The label shall contain the required information in any form that is clearly legible and complies with Section 4-16-5, Federal Laws which apply, and the following paragraphs of this regulation which are subsequently applicable. The information may be on the seed analysis tag, on a separate tag, or printed on each container in a conspicuous manner.

A. Names of Substances.

1. The required name of the substance used in treatment shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name. Commonly accepted coined names are not private trademarks and are available for use by the public and are commonly recognized as names of particular substances.

2. Examples of commonly accepted chemical (generic) names are: blue-stone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene and ethyl mercury acetate. The terms "mercury" or "mercurial" may be used to represent all types of mercurial compounds. Examples of commonly

accepted abbreviated chemical names are BHC (1,2,3,4,5,6, Hexachloroclohexane) and DDT (Dichloro diphenyl trichloroethane).

B. Treatment Coloring.

Any substance which is toxic in nature used in the treatment of seed shall be distinctly colored so as to be readily discernible.

C. Labeling.

Containers of treated seed shall, in addition to the name of the treatment substance used be labeled in accordance with Subsection R68-8-4(C), and shall bear appropriate signal words and warning statements required according to the relative toxicity of the chemical(s) applied. In addition, all seed treated with a chemical seed treatment shall bear the statement, "Keep out of Reach of Children."

1. Labeling Seed Treated with Highly Toxic Substances.

a. Seed treated with a chemical substance, designated by the Environmental Protection Agency or the Commissioner as a highly toxic substance, shall be labeled to conspicuously show the words, "TREATED SEED," together with the name of the substance. Example: "THIS SEED TREATED WITH (name of substance)," or "(name of substance) TREATED". The labeling shall also bear in red coloring the signal words, "DANGER-POISON," and a representation of a skull and crossbones at least twice the size of the type used for the name of the substance. The label shall also include in red letters additional precautionary statements stating hazards to humans and other vertebrate animals, special steps or procedures which should be taken to avoid poisoning, and wording to inform physicians of proper treatment for poisoning.

b. All bags, sacks, or other containers of seed which have been or are being used to contain seeds treated with "highly toxic" substances, shall be identified with the words "DANGER POISON," and a representation of a skull and crossbones. The printing shall be directly printed or impregnated on or into the containers, or applied by other means approved by the department, as to be permanent. Any such container in which seed treated with highly toxic substances has been contained, except for future similar use for seed, shall not again be used to contain any food, feed, or agricultural products, without the prior written approval of the department.

2. Labeling Seed Treated with Moderately Toxic Substances.

Seed treated with a chemical substance designated as moderately toxic, shall be labeled with the words, "TREATED SEED," together with the name of the substance. Examples: "THIS SEED TREATED WITH (name of substance)" or "(name of substance) TREATED." The label shall also bear the signal word, "WARNING". Additional precautionary statements describing hazards to humans and other vertebrate animals, and special handling procedures to avoid poisoning shall also appear in the labeling.

3. Labeling Seed Treated with Low Toxicity Substances.

Seed treated with a chemical designated as low toxicity, or comparatively free from danger shall be labeled with the words, "TREATED SEED" together with the name of the substance. Example: "THIS SEED IS TREATED (name of substance)", or "(name of substance) TREATED." The label shall also bear the signal word, "CAUTION". Additional precautionary statements describing hazards to humans and other vertebrate animals, and special handling procedures to avoid poisoning shall also appear in the labeling.

4. Effective Warning.

Any words or terms used on the label which tend to reduce the effectiveness of the warning statements required by section 4-16-5 and this regulation are construed to be misleading.

5. Bulk Seed.

In the case of seed in bulk, the information required on the labels of packaged seed shall appear on the invoice or other records accompanying and pertaining to such seed.

D. Treatment by Custom Applicators.

The provisions of this regulation shall apply to seed which has been treated by custom applicators, or in a custom manner, even though the transfer of ownership is not intended on said seed.

E. Changes in Federal Law.

The kinds of chemicals declared highly toxic, moderately toxic, or low toxicity and their approved uses on seed must of necessity be in conformity with applicable federal laws and regulations. If at any time the federal government prohibits the use of such substances on seed or makes other changes affecting seed then the provisions of this regulation are considered to be modified to the extent necessary to conform to such federal laws and regulations.

R68-8-5. Inoculated Seed.

The term "inoculant" means a commercial preparation containing nitrogen-fixing bacteria applied to seed. Seed claimed to be inoculated shall be labeled to show the month and year beyond which the inoculant on the seed is no longer claimed to be effective.

R68-8-6. Weight or Seed Count Requirements.

Net weight on all containers is required except that preplanted containers, mats, tapes, or other planting devices shall state the minimum number of seeds in the container. All weight labeling shall be consistent with the requirements of the Weights and Measures Law and rules. Under appropriate circumstances when a seed tag is used, the weight information may appear on the seed tag rather than on the seed bag. The term "weight" shall be understood and construed to mean the net weight of the commodity.

R68-8-7. Labeling of Agricultural Seed Varieties.

A. The following kinds of agricultural seeds shall be labeled to show the variety name or the words, "Variety Not Stated."

Alfalfa
Bahiagrass
Beans, field
Beets, field
Brome, smooth
Broomcorn
Clover, crimson
Clover, red
Clover, white
Corn, field
Corn, pop
Cotton
Cowpea
Crambe
Fescue, tall
Flax
Lespedeza, striate
Millet, foxtail
Millet, pearl
Oat
Pea, field
Peanut
Rice
Rye
Safflower
Sorghum
Sorghum-Sudangrass
Sudangrass hybrid
Soybean
Sudangrass
Sunflower

Tobacco
Trefoil, birdsfoot

B. The following kinds of agriculture seeds shall be labeled to show the variety name:

Barley
Triticale
Wheat, Common
Wheat, durum

C. When two or more varieties are present in excess of five percent and are named on the label, the name of each variety shall be accompanied by the percentage of each.

R68-8-8. Labeling of Lawn Seed Mixtures.

A. Format. When labeling lawn and turf seed mixtures as provided by Section 4-16-4, the following format shall be used:

TABLE

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Grass Seed Mixture
Lot 77-7

PURE SEED                                GERMINATION

42.20% Kentucky Bluegrass                80%
28.37% Annual Ryegrass                   85%
11.90% Creeping Red Fescue               85%
 5.43% White Dutch Clover                75%
HARD SEED                                10%
  .50% Weed Seed Tested:  July 1979
 1.60% Other crop seed
10.00% Inert matter

Noxious weed seed-none
John Doe Seed Company, Inc.
1977 Bell Street, Salt Lake City, Utah 84000
Net Weight:  5 pounds
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B. Agricultural seed other than seed required to be named on the label shall be designated as "other crop seed" or "crop seed." If a mixture contains no crop seed, the statement "contains no other crop seed," may be used.

C. The headings "pure seed" and "germination" or "germ," shall be used in the proper place.

D. The word "mixed" or "mixture" shall be stated with the name of the mixture.

R68-8-9. Vegetable Seeds and Minimum Germination Standards.

A. Vegetable seeds are the seeds of the following, and the minimum germination standards are as indicated:

TABLE

KIND	MINIMUM PERCENT GERMINATION STANDARD
Artichoke--Cynara scolymus	60
Asparagus--Asparagus officinalis	70*
Bean, garden--Phaseolus vulgaris	70*
Bean, asparagus--Vigna sequipedalis	75*
Bean, lima--Phaseolus lunatus var. macrocarpus	70*
Bean, runner--Phaseolus coccineus	75
Beet--Beta vulgaris	65
Broadbean--Vicia fava	75
Broccoli--Brassica oleracea var. botrytis	75
Brussels sprouts--Brassica oleracea var. gemmifera	70
Burdock, great--Arctium lappa	60
Cabbage--Brassica oleracca var. capitata	75
Cabbage, Chinese--Brassica Pekinensis	75
Cabbage, tronchuda--Brassica oleracea var. tronchuda	75
Cantalope (see Muskmelon)	
Cardoon--Cynara cardunculus	60
Carrot--Daucus carota	55
Cauliflower--Brassica oleracea var. botrytis	75
Celery and celeriac--Apium graveolens var. dulce and repaceum	55
Chard, Swiss--Beta vulgaris var. cicla	65
Chicory--Cichorium intybus	65
Chives--Allium schoenoprasum	50
Citron--Citrullus lanatus var. citroides	65
Collards--Brassica oleracea var. acephala	80
Corn, Sweet--Zea mays	75
Cornsalad (Fetticus--Valerianella locusta)	70
Cowpea--Vigna sinensis	75
Cress, garden--lepidium sativum	75
Cress, Upland--Barbarea verna	60
Cress, Water--Rorippa nasturtium-acquaticum	40
Cucumber--Cucumis sativus	80
Dandelion--Taraxacum officinals	60
Eggplant--Solanum melongena	60
Endive--Cichorium endivia	70
Herbs--(all kinds and varieties not listed)	50
Kale--Brassica spp.	75
Kohlrabi--Brassica oleracea var. gongylodes	75
Leek--Allium porrum	60
Lettuce--Lactuca sative	80
Muskmelon (Cantalope)--Cucumis melo	75
Mustard, India--Brassica juncea	75
Mustard, spinach--Brassica perviridis	75
Okra--Hibiscus esculentus	50
Onion--Allium cepa	70
Onion, Welsh--Allium fistulosum	70
Pak-choi--Brassica chinensis	75
Parsley--Petroselinum crispum	60
Parsnip--Pastinaca sativa	60
Pea, garden--Pisum sativum	80*
Pepper--Capsicum spp.	55
Pumpkin--Cacurbita pepo	75
Radish--Raphanus sativus	75
Rhubard--Rheum rhaponticum	60
Rutabaga--Brassica napus var. napobrassica	75
Salsify--Tragapogon porrifolius	75
Sorrel--Rumex spp	65
Soybean--Glycine max. L.	75
Spinach--Spinacia oleracea	60
Spinach, New Zealand--Tetragonia expansa	40
Squash--Cucurbita pepo	75
Tomato--Lycopersicon esculentum	75
Tomato, husk--Physalis spp	50
Turnip--Brassica rapa	80
Watermelon--Citrullus vulgaris	70

*Including hard seeds

R68-8-10. Flower Seeds and Minimum Germination Standards.

The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed and which are therefore required to be labeled in accordance with the germination labeling provisions of Section 4-16-4. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, this percentage is the total percentage of germination and percentage of hard seed.

TABLE

KIND	MINIMUM GERMINATION STANDARDS
Archillea (The Pearl)--Achillea ptarmica	50
African daisy--Dimorphotheca aurantiaca	55
African Violet--Saintpaulia SPP	30
Ageratum--Ageratum mexicanum	60
Agrostemma (rose campion)--Agrostemma coronaria	65
Alyssum-Alyssum compactum, A. maritimum, A. procumbens, A. saxatile	60
Amaranthus--Amaranthus spp.	65
Anagalis (pimpernel)--Anagalis arvensis, Anagalis coerulea, Anagalis grandiflora	60
Anemone--Anemone coronaria, A. pulsatilla	55
Angel's trumpet--Datura arborea	60
Arabis--Arabis alpina	60
Arctotis (African lilac daisy)--	
Arctotis grandis	45
Armeria--Armeria formosa	55
Asparagus, fern--Asparagus plumosus	50
Asparagus, sprenger--Asparagus sprengeri	55

Aster, China--Callistephus chinensis, except Pompom, Powderpuff and Princess types 55
Aster, China--Callistephus chinensis, Pompom, Powderpuff and Princess types. 50
Aubrietia--Aubrietia deltoides 45
Baby Smilax--Asparagus asparagoides 25
Balsam--Impatiens balsamina 70
Begonia--(Begonia fibrous rooted) 60
Begonia--(Begonia tuberous rooted) 50
Bells of Ireland--Molucella laevis 60
Brachycome (swan river daisy)--
Brachycome iberidifolia 60
Browallia--Browallia elata and B speciosa 65
Buphthalmum (willowleaf oxeye)--
Buphthalmum salicifolium 60
Calceolaria--Calceolaria spp 60
Calendula--Calendula officinalis 65
California Poppy--Eschscholtzia california 60
Calliopsis--Coreopsis bicolor, C. drummondi, C. elegans 65
Campanula: 60
Cantebury bells--Campanula medium 60
Cup and Saucer bellflower--Campanula calycanthema 60
Carpathian bellflower--Campanula carpatica 50
Peach bellflower--Campanula persicifolia 50
Candytuft, annual--Iberis amara, I. umbellata 65
Candytuft, perennial--Iberis gibraltarica I. sempervirens 55
Caster bean--Richinus communis 60
Cathedral bells--Cobaea scandens 65
Celosis--Celosia argentea 65
Centaurea: Basketflower--Centaurea americana, Cornflower-C. cyanus, Dusty Miller--C. candidissima, Royal centaurea C. imperialis, Sweet Sultan--C. moschata, Velvet centaurea C. gymnocarpa 60
Cerastium (snow in summer)--Cerastium biebersteini and C. tomentosum 65
Chinese forget-me-not--Cynoglossum amabile 55
Chrysanthemum, annual--Chrysanthemum carinatum, C. coronarium, C. segetum 40
Cineraria--Senecio cruentus 60
Clarkia--Clarkia elegans 65
Cleome--Cleome gigantea 65
Coleus--Coleus blumei 65
Columbine--Aquilegia spp 50
Coral Bells--Heuchera sanquinea 55
Coreopsis, perennial--Coreopsis lanceolata 40
Corn, Ornamental--Zea Mays 75
Cosmos: Sensation, Mammoth and Crested type--Cosmos bipinnatus; Klondyke type-C. sulphureus 65
Crossandra--Crossandra infundibuliformis 50
Dahlia--Dahlia spp 55
Daylily--Hemerocallis spp. 45
Delphinium, perennial; Belladonna and Bellamosum types: Cardinal larkspur--Delphinium cardinale; Chinesis types; Pacific Giant, Gold Medal and other hybrids of D. elatum 55
Dianthus:
Carnation--Dianthus caryophyllus 60
China pinks--Dianthus chinensis, Heddewigi, Heddensis 70
Grass pinks--Dianthus plumarius 60
Maiden pinks--Dianthus deltoides 60
Sweet William--Dianthus barbatus 70
Sweet Wivelsfield--Dianthus allwoodi 60
Didiscus (blue lace flower)--Didiscus coerulea 65
Doronicum (leopard's bane)--Doronicum caucasicum 60
Dracena--Cracena indivisa 55
Dragon Tree--Dracaena Draco 40
English daisy--Bellis perennis 55
Flax, Golden--Linum flavum, Flowering flax L. grandiflorum, perennial flax L. perenne 60
Flowering Maple--Abutilon spp. 35
Foxglove--Digitalis spp 60
Gaillardia, annual--Gallardia pulchella, G. picta; perennial G. grandiflora 45
Gerbera (transvaal daisy)--Gerbera jamesoni 60
Geum--Geum spp 65
Gilia--Gilia spp 65
Gloriosa daisy (rudbeckia) Echinacea purpurea and Rudbeckia hirta 60
Gloxinia--Sinningia speciosa 40
Godetia--Godetia amonea, G. grandiflora 65
Gourds: Yellow flowered--Cucurbita pepo; White flowered Lagenaria sisceraria; Dishcloth-Luffa cylindrica 70
Gypsophila, annual Baby's breath--Gypsophila elegans; perennial Baby's breath-G. paniculata, G. pacifica, G. repens 70
Helenium--Helenium autummale 40
Helichrysum--Helichrysum monstrosum 60
Heliopsis--Heliopsis scabra 55
Heliotrope--Heliotropium spp 35
Helipeterum (Acroclinum)--Helipeterum roseum 60
Hesperis (sweet rocket)--Hesperis matronalis 65
Hollyhock--Althea rosea 65*
Hunnemannia (Mexican tulip poppy)--Hunnemannia fumariaefolia 60
Hyacinth bean--Dolichos loblab 70*
Impatiens--Impatiens holstii, I. sultani 55
Ipomea: Cypress vine--Ipomea quamoclit; Moonflower-I. noctiflora; Morning glories, Cardinal climber, Hearts and Honey vine--Ipomea spp 75*
Jerusalem cross (Maltese cross)--Lychnis chalcedonica 70
Job's tears--Ciox lacryma-jobi 70
Kochia (Mexican fire bush)--Kochia childsii 55
Larkspur, annual--Delphinium ajacia 60
Lantana--Lantana camara, L. hybrida 35
Lilium (regal lily)--Lilium regale 50
Linaria--Linaria spp 65
Lobelia--Lobelia erinus 65
Lunaria, honesty--Lunaria annua 65
Lupine--Lupinus spp 65*
Marigold--Tagetes spp 65
Marvel of Peru (Four-O'clock)--Mirabilis jalapa 60
Matricaria (feverfew)--Matricaria spp 60
Migonette--Reseda odorata 55
Myosotis--Myosotis alpestris, M. oblongata, M. pulastris 50
Nasturtium--Tropeaolum spp 60
Nemesia--Nemesia spp 65
Nemophila--Nemophila insignis 70
Nemophila, spotted--Nemophila maculata 60
Nicotiana--Nicotiana affinis, N. sanderae, N. sylvestris 65
Nierembergia--Nierembergia spp 55
Nigella--Nigella damascena 55
Pansy--Viola tricolor 60
Penstemon--Penstemon barbatus, P. grandiflorus, P. laevigatus, P. pupescens 60
Petunia--Petunia spp 45
Phacelia--Phacelia campanularia, P. minor, P. tanacetifolia 65
Phlox, annual--Phlox drummondii all types and varieties 55
Physalis--Physalis spp 60
Plantycodon (balloon flower)--Platycodon grandiflorum 60
Plumbago, cape--Plumbago capensis 50
Ponytail--Beaucarnea Recurvata 40
Poppy: Shirley poppy--Papaver rhoeas, Iceland poppy P. nudicaule, Oriental poppy-P. orientale, Tulip poppy P. glaucum 60
Portulaca--Portulaca grandiflora 65
Primula (primrose)--Primula spp 50
Pyrethrum (painted daisy)--Pyrethrum coccineum 60
Salpiglossis--Salpigloss's gloxinaeflora, S. sinuata 60
Salvia--Scarlet Sage--Salvia spendens, Mealycup Sage (blue bedder)--Salvia farinacea 50

Saponaria--Saponaria ocymoides, S. vaccaria	60
Scabiosa, annual--Scabiosa atropurpurea	50
Scabiosa, perennial--Scabiosa caucasica	40
Scizanthus--Schizanthus spp	60
Sensitive plant (mimosa)--Mimosa pudica	65*
Shasta Daisy-Chrysanthemum maximum, C. leucanthemum	65
Silk Oak--Grevillea Robusta	25
Snapdragon--Antirrhinum spp	55
Solanum--Solanum spp	60
Statice--Statice sinuata S. suworowii (flower heads)	50
Stocks: Common--Matthiola incana, Evening Scented-Matthiola bicornis	65
Sunflower--Helianthus spp	65
Sunrose--Helianthemum spp	30
Sweet pea, annual and perennial other than dwarf bush-Lathyrus odoratus, L. latifolius	75*
Sweet pea, dwarf bush--Lathyrus odoratus	65*
Tahoka daisy--Machacanthera tanacetifolia	60
Thunbergia--Thunbergia alata	60
Torch flower--Tithonia speciosa	70
Torenia (wishbone flower)--Torenia fournieri	70
Tritoma--Kniphofia spp	65
Verbena, annual--Verbena hybrida	35
Vinca (periwinkle)--Vinca rosea	60
Viola--Viola carnuta	55
Virginian stocks--Malcolmia maritima	65
Wallflower--Cheiranthus allioni, C. cheiri	65
Yucca (Adamsneedle)--Yucca filamentosa	50
Zinnia (except linearis and creeping)--	
Zinnia augustifolia, Z. elegans, Z. grandifloria, Z. gracillima, Z. haageana, Z. multiflora, Z. pumila	65
Zinnia, linearis and creeping-- Zinnia linearis, Sanvitalia procumbens	50
All other kinds	50

* Including hard seeds

R68-8-11. Labeling of Flower Seeds.

Flower seeds shall be labeled with the name of the kind and variety or a statement of type and performance characteristics as prescribed by Section 4-16-4.

A. Seeds of Plants Grown Primarily for Their Blooms.

1. Single Name. Seeds of a single name variety shall be labeled to show the kind and variety name. For example: "Marigold, Butterball."

2. Single Type and Color. Seeds of a single type and color for which there is no special variety name shall be labeled to show either the type of plant or the type of color of bloom. For example: "Scabiosa, Tall, Large Flowered, Double, Pink."

3. Assortment of Colors. Seeds consisting of an assortment of mixture of colors or varieties of a single kind shall be labeled to show the kind name, the type of plant, and the types of bloom. In addition, it shall be clearly indicated that the seed is mixed or assorted. An example of labeling such a mixture or assortment is-"Marigold, Dwarf, Double French, Mixed colors."

4. Assortment of Kinds. Seeds consisting of an assortment of mixture of kinds shall be labeled to clearly indicate that the seed is assorted or mixed and the specific use of the assortment of mixture shall be indicated. For example: "Cut Flower Mixture," or "Rock Garden Mixture." Such statements as "Wild Flower Mixture," "General Purpose Mixture," "Wonder Mixture," or any other statement which fails to indicate the specific use of the seed shall not meet the requirements of this provision unless the specific use of the mixture is also stated.

B. Seeds of Plants Grown for Ornamental Purposes Other Than Their Blooms. Seeds of plants grown for ornamental purposes other than their blooms shall be labeled to show the kind and variety, or the kind together with a descriptive statement concerning the ornamental part of the plant. For example: "Ornamental Gourds, Small Fruited, Mixed."

R68-8-12. Application of Germination Standards to Mixtures of Kinds of Flower Seeds.

A mixture of kinds of flower seeds will be considered to be below standard if the germination of any kind or combination of kinds constituting 25 % or more of the mixture by number is below standard for the kind or kinds.

R68-8-13. Tree and Shrub Seed Labeling.

The information in the following example shall be used for all tree and shrub seeds for which standard testing procedures are prescribed.

TABLE

Common Name:			Lot#:
Genus:			Species:
Origin: State:		County:	Elevation:
Date Collected or Tested:		Month:	Year:
Pure Seed: %	Weed Seed: %		Inert Matter:
Other crop seed:	% Germination: %		Hard Seed:
Net Weight:			
Name:			
Address:			

If the kind of seed to be labeled is not one for which standard testing procedures are prescribed, the information on germination and hard seeds may be omitted from the example shown above.

R68-8-14. Hermetically Sealed Seed Containers.

The 36-month provision on the date of test in Section 4-16-5 will apply to hermetically sealed agricultural and vegetable seed when the following conditions have been met:

A. The seed was packaged within nine months after harvest.

B. The container used does not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100 degrees F. with a relative humidity on one side of 90 percent and on the other side 0 percent. Water vapor penetration (WVP) is measured by the standards adopted by the U. S. Bureau of Standards as: WVP=gm H_2O/24 hr./100 sq. in./100 degrees F./90% RHV. 0%RH

C. The seed in the container does not exceed the percentage of moisture, on a wet weight basis, as listed below:

TABLE

1. AGRICULTURAL SEEDS	PERCENT
Beet, field	7.5
Beet, sugar	7.5
Bluegrass, Kentucky	6.0
Clover, Crimson	8.0
Fescue, Red	8.0
Ryegrass perennial	8.0
All other agricultural seed	6.0
Mixtures of above	8.0

2. VEGETABLE SEEDS	PERCENT
Bean, garden	7.0
Bean, lima	7.0
Beet	7.5
Broccoli	5.0
Brussel sprouts	5.0
Cabbage	5.0
Carrots	7.0
Cauliflower	5.0
Celeriac	7.0
Celery	7.0
Chard, Swiss	7.5
Chinese cabbage	5.0
Chives	6.5
Collards	5.0
Corn, sweet	8.0
Cucumber	6.0
Eggplant	6.0
Kale	5.0

Kohlrabi	5.0
Leek	6.5
Lettuce	5.5
Muskmelon	6.0
Mustard, India	5.0
Onion	6.5
Onion, Welsh	6.5
Parsley	6.0
Parsnip	6.0
Pea	7.0
Pepper	4.5
Pumpkin	6.0
Radish	5.0
Rutabaga	5.0
Spinach	8.0
Squash	6.0
Tomato	5.5
Turnip	5.0
Watermelon	6.5
All other vegetable seed	6.0

D. The container is conspicuously labeled in not less than eight point type to indicate:

1. That the container is hermetically sealed.

2. That the seed has been preconditioned as to moisture content, and

3. The calendar month and year in which the germination test was completed.

E. The percentage of germination of the vegetable seed at the time of packaging was equal to or above the standards specified in Section R68-8-9.

R68-8-15. Rules for Seed Testing.

Rules for testing seeds shall be the same as those found in the current "Rules For Testing Seeds" recommended by the Association of Official Seed Analysts. For seeds not listed in the "Rules for Testing Seed," procedures for testing shall be determined by the State Seed Analyst based upon the most authoritative seed testing information available. For seed not listed in the "Rules for Testing Seeds," procedures for testing shall be determined by the State Seed Analyst based upon the most authoritative seed testing information available. Utah Department of Agriculture and Food has a copy of the "Rules for Testing Seeds", on file in the Seed Laboratory.

R68-8-16. Labeling of Chemical Tests for Viability (Tetrazolium).

The results of tetrazolium tests performed in accordance with the current "Rules For Testing Seeds" of the Association of Official Seed Analysts shall be recognized for labeling purposes.

R68-8-17. Labeling of Seed Distributed to Wholesalers.

A wholesaler, whose predominant business is to supply seed to other distributors rather than to consumers, shall label seed as follows:

A. Containers. If the seed is in containers, the information required in Section 4-16-4 need not be shown on each container provided, that:

1. The lot designation is shown on an attached label or by stenciling or printing on container.

2. The required information for labeling accompanies such shipment.

B. Bulk. In the case of seed in bulk, the information required in Section 4-16-4 shall appear in the invoice or other records accompanying and pertaining to such seed.

R68-8-18. Inspector's Duties.

It shall be the duty of the District Agricultural Inspectors, either in person or by deputy, to quarantine any lots of seed which contain weed seeds in violation of current regulations of the Department of Agriculture and Food. Such seed may be recleaned under the supervision of any official representative of the Utah State Department of Agriculture and Food, and if found to meet the requirements of the current regulations of the Department of Agriculture and Food with respect to weed seed content, the same may be released for distribution, otherwise, such seed will be destroyed. It shall be the duty of the District Agricultural Inspectors, either in person or by deputy, to quarantine any lots of seed which do not comply with the labeling provisions of Section 4-16-4, and Section R68-8. Such seeds shall remain quarantined and shall not be offered for sale until they are properly labeled to meet the above requirements.

R68-8-19. Sampling.

A. General Procedure

1. In order to secure a representative sample, equal portions shall be taken from evenly distributed parts of the quantity of seed or screenings to be sampled. Access shall be had to all parts of that quantity.

2. For free-flowing seed in bags or bulk, a probe or trier shall be used. For small free-flowing seed in bags, a probe or trier long enough to sample all portions of the bag shall be used.

3. Non-free-flowing seed, such as certain grass seed, uncleaned seed, or screenings which are difficult to sample with a probe or trier, shall be sampled by thrusting the hand into the bulk and withdrawing representative portions.

4. The portions shall be combined into a composite sample or samples.

5. As the seed or screening is sampled, each portion shall be examined and whenever there appears to be lack of uniformity, additional samples shall be taken to show such lack of uniformity as may exist.

B. Bulk. Bulk seeds or screenings shall be sampled by inserting a probe or thrusting the hand into the bulk, as circumstances require, to obtain a composite sample of at least as many cores or handfuls of seed or screenings as if the same quantity were in bags of an ordinary size. The cores or handfuls of seed which comprise the composite sample shall be taken from well distributed points throughout the bulk.

C. Bags.

1. In quantities of six bags or less, each bag shall be sampled.

2. In quantities of more than six bags, five bags plus at least 10% of the number of bags in the lot shall be sampled, rounding numbers with decimals to the nearest whole number. Regardless of the lot size, it is not necessary to sample more than thirty bags. Example:

TABLE

No. Bags in Lot	7	10	23	50	100	200	300	400
No. Bags to Sample	6	6	7	10	15	25	30	30

3. Samples shall be drawn from unopened bags except under circumstances where the identity of the seed has been preserved.

D. Small Containers. Seed in small containers shall be sampled by taking the entire unopened containers in sufficient number to supply a minimum size sample as required in Subsection R68-8-19(E). The contents of a single container or the combined contents of multiple containers of the same lot shall be considered representative of the entire lot of seed sampled.

E. Size of Samples. The following are minimum weights of samples of seed to be submitted for analysis, test, or examination:

1. Grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these - two ounces (approximately 55 grams).

2. Alfalfa, bromegrasses, crimson or red clover, flax, lespedezas, millet, rape, ryegrass or seeds of similar size - five ounces (approximately 150 grams).

3. Proso, sudangrass, or seeds of similar size - one pound. (Approximately 500 grams).

4. Cereals, sorghums, vetches or seeds of similar or larger size - two pounds (approximately 1000 grams).

5. Vegetable and flower seed - at least 400 seeds per sample.

6. Tree and shrub seed - at least 600 seeds per sample for germination purposes. If a purity or noxious-weed seed examination is required, the amount of sample shall be at least the size of that required for seeds of similar size in Subsections R68-8-19(E)(1), (2), (3), and (4).

7. Screenings - two quarts.

R68-8-20. Records.

The term "Complete Records," as it pertains to Section 4-16-11, shall be construed to mean information which relates to origin, germination, purity, variety, and treatment of each lot of seed transported or delivered for transportation within this State. Such information shall include seed samples and records of declaration, labels, purchases, sales, cleaning, bulking, handling, storage, analysis, tests, and examinations. The complete record kept by each person for each lot of seed consists of the information pertaining to his own transactions and the information received from others pertaining to their transactions with respect to each lot of seed.

R68-8-21. Advertising.

The name of a kind or kind and variety of seed and any descriptive terms pertaining thereto shall be correctly represented in any advertisement of seed.

A. Name of Kind or Kind and Variety. The representation of the name of a kind or kind and variety of seed in any advertisement subject to the act shall be confirmed to the name of the kind or kind and variety determined in accordance with Section 4-16-2 associated with words or terms that create a misleading impression as to the history or characteristics of the kind or kind and variety. Descriptive terms and firm names may be used in kind and variety names; provided, that the descriptive terms or firm names are a part of the kind or variety of seed; for example, Stringless Green Pod, Detroit Dark Red, Black Seed Simpson, and Henderson Bush Lima. Seed shall not be designated as hybrid seed in any advertisement subject to the act unless it comes within the definition of "Hybrid" in Section 4-16-2.

B. Characteristics of Kind or Variety. Terms descriptive as to color, shape, size, habit of growth, disease resistance, or other characteristics of the kind or variety, may be associated with the name of the kind or variety; provided, that it is done in a manner which clearly indicates the descriptive term is not part of the name of the kind or variety; for example, Oshkosh pepper (yellow) Copenhagen Market (round head) cabbage, and Kentucky Wonder pole bean.

C. Description of Quality and Origin. Terms descriptive of quality or origin and terms descriptive of the basis for representations made may be associated with the name of the kind or variety of seed; provided, that the terms are clearly identified as being other than part of the name of the kind or variety; for example: Blue Tag Gem Barley, Idaho Origin Alfalfa, and Grower's Affidavit of Variety Atlas Sorghum.

D. Description of Manner of Production or Processing. Terms descriptive of the manner or method of production or processing the seed may be associated with the name of the kind or variety of seed, providing such terms are not misleading.

E. Separation of Brand Names from Kind and Variety Names. Brand names and terms taken from trademarks may be associated with the name of the kind and variety or mixtures of kinds or blends of varieties of seed as an indication of source; provided, that the terms are clearly indicated as being other than part of the name of the kind and variety, mixture or blend. For example: Valley Brand Blend 15 Alfalfa, or River Brand Golden Cross Corn.

R68-8-22. Seed Screenings.

It shall be unlawful for any person, company, or corporation to sell, offer for sale, barter, give away, or otherwise dispose of any screenings containing more than 6 whole prohibited noxious weed seeds per pound and/or more than 27 whole restricted weed seeds per pound; except that screenings containing such seeds may be moved or sold to a mill or plant for processing in such a manner which will reduce the number of whole weed seeds to within the above stated tolerances. Each container or shipment of screenings shall be labeled with the words "Screenings for Processing - Not For Seeding or Feeding" and with the name and address of the consignor and consignee.

R68-8-23. Fees For Testing Services.

Charges for testing samples, representing seed sold or offered for sale in Utah, or other services performed by the state seed laboratory, shall be determined by the department pursuant to Subsection 4-2-2(2). A current listing of approved fees may be obtained upon request from Utah State Department of Agriculture and Food.

KEY: inspections

May 30, 2000	**4-2-2**
Notice of Continuation July 31, 2001	**4-16-3**
	4-17-3

R68. Agriculture and Food, Plant Industry.
R68-9. Utah Noxious Weed Act.
R68-9-1. Authority.

Promulgated under authority of 4-2-2 and 4-17-3.

R68-9-2. Designation and Publication of State Noxious Weeds.

A. The following weeds are hereby officially designated and published as noxious for the State of Utah, as per the authority vested in the Commissioner of Agriculture and Food under Section 4-17-3:

TABLE

Bermudagrass*	Cynodon dactylon (L.) Pers.
Bindweed (Wild Morning-glory)	Convolvulus spp.
Broad-leaved Peppergrass (Tall Whitetop)	Lepidium latifolium L.
Canada Thistle	Cirsium arvense (L.) Scop.
Diffuse Knapweed	Centaurea diffusa (Lam.)
Dyers Woad	Isatis tinctoria L.
Perennial Sorghum spp.	including but not limited to Johnson Grass (Sorghum halepense (L.) Pers.) and Sorghum Almum (Sorghum almum, Parodi).
Leafy Spurge	Euphorbia esula L.
Medusahead	Taeniatherum caput-medusae (L.) Nevski
Musk Thistle	Carduus nutans L.
Purple Loosestrife	Lythrum salicaria L.
Quackgrass	Agropyron repens (L.) Beauv.
Russian Knapweed	Centaurea repens L.
Scotch Thistle (Cotton Thistle)	Onopordium acanthium L.
Spotted Knapweed	Centaurea maculosa Lam.
Squarrose Knapweed	Centaurea virgata Lam. ssp squarrosa Gugle.
Whitetop	Cardaria spp.
Yellow Starthistle	Centaurea solstitialis L.

* Bermudagrass (Cynodon dactylon) shall not be a noxious weed in Washington County and shall not be subject to provisions of the Utah Noxious Weed Law within the boundaries of that county. It shall be a noxious weed throughout all other areas of the State of Utah and shall be subject to the laws therein.

R68-9-3. Designations and Publication of Articles Capable of Disseminating Noxious Weeds.

A. As provided in Section 4-17-3, the following articles are designated and published by the Commissioner as capable of disseminating noxious weeds:

1. Machinery and equipment, particularly combines and hay balers.
2. Farm trucks and common carriers.
3. Seed.
4. Screenings sold for livestock feed.
5. Livestock feed material.
6. Hay, straw, or other material of similar nature.
7. Manure.
8. Soil, sod and nursery stock.
9. Noxious weeds distributed or sold for any purpose.
10. Livestock.

R68-9-4. Prescribed Treatment for Articles.

A. As provided in Section 4-17-3, the Commissioner has determined that the following treatments shall be considered minimum to prevent dissemination of noxious weed seeds or such parts of noxious weed plants that could cause new growth by contaminated articles:

1. Machinery and Equipment.

a. It shall be unlawful for any person, company or corporation to

(1) bring any harvesting or threshing machinery, portable feed grinders, portable seed cleaners or other farm vehicles or machinery into the state without first cleaning such equipment free from all noxious weed seed and plant parts; or

(2) move any harvesting or threshing machinery, portable feed grinders or portable seed cleaners from any farm infested with any noxious weed without first cleaning such equipment free from all noxious weed seed and plant parts.

(a) Immediately after completing the threshing of grain or seed which is contaminated with noxious weeds, such machine is to be cleaned by:

(1) removing all loose material from the top and side of the machine by sweeping with a blower

(2) opening the lower end of elevator, return and measuring device and removing infested material from shakers, sieves, and other places of lodgement;

(3) running the machine empty for not less than five minutes, alternately increasing and retarding the speed; and

(4) following the manufacturer's detailed suggestions for cleaning the machine.

2. Farm Trucks and Common Carriers.

It shall be unlawful for any person, company or corporation to transport seed, screenings or feed of any kind containing noxious weed seed over or along any highway in this State or on any railroad operating in this State unless the same is carried or transported in such vehicles or containers which will prevent the leaking or scattering thereof. All common carriers shall thoroughly clean and destroy any noxious weed seeds or plant parts in cars, trucks, vehicles or other receptacles used by them after each load shall have been delivered to consignee before again placing such car, truck, vehicle or receptacle into service.

3. Seed.

a. It shall be unlawful for any person, firm or corporation to sell, offer or expose for sale or distribute in Utah any agricultural, vegetable, flower or tree and shrub seeds for seeding purposes which contain any seeds of those weeds declared noxious by the Commissioner of Agriculture and Food.

b. It shall be the duty of the State Agricultural Inspector to remove from sale any lots of seeds offered for sale which are found to contain noxious weed seeds. Such seed may be recleaned under the supervision of the inspector and, if found to be free from noxious weed seeds, the same may be released for sale or distribution; otherwise, such seed shall be returned to point of origin, shipped to another state where such weed shall be returned to point of origin, shipped to another state where such weed seed is not noxious, or destroyed or processed in such a manner as to destroy viability of the weed seeds.

4. Screenings Sold for Livestock Feed.

a. All screenings or by-products of cleaning grains or other seeds containing noxious weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy such weed seeds so that the finished product contains not more than six whole noxious weed seeds per pound.

b. All mills and plants cleaning or processing any grains or other seeds shall be required to grind or otherwise treat all screenings containing noxious weed seeds so as to destroy such weed seeds to the extent that the above stated tolerance is not exceeded before allowing the same to be removed from the mill or plant. Such screenings may be moved to another plant for grinding and treatment; provided that: each container or shipment is labeled with the words "screenings for processing - not for seeding or feeding" and with the name and address of the consignor and the consignee.

5. Livestock Feed Material.

a. It shall be unlawful for any person, company or corporation to sell or offer for sale, barter or give away to the ultimate consumer any livestock feed material, including whole grains, which contain more than six whole noxious weed seeds per pound. Whole feed grain which exceeds this tolerance of noxious weed seeds may be sold to commercial processors or commercial feed mixers where the manner of processing will

reduce the number of whole noxious weed seed to no more than six per pound.

6. Hay, Straw or Other Material of Similar Nature.

a. It shall be unlawful for any person, company or corporation to sell or offer for sale, barter or give away any hay, straw, or other material of similar nature, which is contaminated with mature noxious weed seeds or such parts of noxious weed plants which could cause new growth.

7. Manure.

a. Manure produced from grain, hay, or other forage infested with noxious weeds shall not be applied or dumped elsewhere than upon the premises of the owner thereof.

8. Soil, Sod and Nursery Stock.

a. No soil, sod or nursery stock which contains or is contaminated with noxious weed seeds, or such parts of the plant that could cause new growth, shall be removed from the premises upon which it is located until cleaned of such weed seed or plant parts, except that such contaminated soil may be used for restrictive non-planting purposes upon permission and under direction of the county weed supervisor or a representative of the Utah Department of Agriculture and Food.

9. Noxious Weeds Distributed or Sold for Any Purpose.

a. It shall be unlawful for any person, company or corporation to sell, barter or give away any noxious weed plants or seeds for any purpose.

10. Livestock.

a. No livestock to which grain, hay, or other forage containing noxious weed seeds has been fed shall be permitted to range or graze upon fields other than those upon which they have been so fed for a period of 72 hours following such feeding. During such period, they shall be fed materials which are not contaminated with noxious weed seeds.

R68-9-5. Reports From Counties.

A. The Board of County Commissioners of each county, with the aid of their county Weed Board and their County Weed Supervisor, shall submit an "Annual Progress Report of County Noxious Weed Control Program" to the Commissioner of Agriculture and Food by January 15 of each year, covering the activities of the previous calendar year. A prescribed form for this report shall be supplied by the Commissioner.

R68-9-6. Notices.

A. General and individual notices pertaining to the control and prevention of noxious weeds shall be substantially of the types prescribed herein; namely, General Notice to Control Noxious Weeds, Individual Notice to Control Noxious Weeds, and Notification of Noxious Weed Lien Assessment.

1. General Notice To Control Noxious Weeds.

A general public notice shall be posted by the County Weed Board in at least three public places within the county and be published in one or more newspapers of general circulation throughout the county, on or before May 1 of each year and at any other times the County Weed Board determines. Such public notice shall state that it is the duty of every property owner to control and prevent the spread of noxious weeds on any land in his possession, or under his control, and shall serve as a warning that if he fails to comply with this notice, enforced weed control measures may be imposed at the direction of county authorities. Such general notice shall also include a list of weeds declared noxious for the State of Utah and for said county, if any.

2. Individual Notice to Control Noxious Weeds.

Following publication of a general notice, if a County Weed Board determines that definite weed control measures are required to control noxious weeds on a particular property, the Board shall cause an individual notice to be served upon the owner or the person in possession of said property, giving specific instructions concerning when and how the noxious weeds are to be controlled within a specified period of time. The individual notice shall also inform the property owner or operator of legal action which may be taken against him if he fails to comply with said notice.

3. Notification of Noxious Weed Lien Assessment.

If it is deemed advisable, the Board of County Commissioners may cause noxious weeds to be controlled on a particular property and any expenses incurred by the county shall be paid by the owner of record or the person in possession of the property. A notice shall be provided such person, showing an itemized cost statement of the labor and materials necessarily used in the work of said control measures. This notice shall also state that the expense constitutes a lien against the property and shall be added to the general taxes unless payment is made to the County Treasurer within 90 days.

KEY: weed control
November 3, 1997 4-2-2
Notice of Continuation June 13, 2003 4-17-3

R81. Alcoholic Beverage Control, Administration.
R81-5. Private Clubs.
R81-5-1. Licensing.

(1) Private club liquor licenses are issued to persons as defined in Section 32A-1-105(38). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-5-103 and 32A-5-107(44).

(2)(a) At the time the commission grants a private club license the commission must designate whether the private club qualifies to operate as a class A, B, C, or D private club based on criteria in 32A-5-101.

(b) After the license is granted, a private club may request that the commission approve a change in the club's classification in writing supported by evidence to establish that the club qualifies to operate under the new class designation based on the criteria in 32A-5-101.

(c) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(d) If the commission determines that the private club has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the commission shall approve the request.

(3)(a) A class C private club must operate as a dining club as defined in 32A-5-101(3)(c), and must maintain at least 50% of its total private club business from the sale of food, not including mix for alcoholic beverages, service charges, and membership fees.

(b) A class C private club shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(c) If any inspection or audit discloses that the sales of food are less than 50% for any quarterly period, an order to show cause shall be issued by the department to determine why the license should not be immediately reclassified by the commission as a class D private club. If the commission grants the order to show cause, the reclassification shall remain in effect until the licensee files a request for and receives approval from the commission to be classified as a class C private club. The request shall provide credible evidence to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed 50%.

R81-5-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a private club license when the requirements of Sections 32A-5-102,-103, and -106 have been met, a completed application has been received by the department, and the private club premises have been inspected by the department.

R81-5-3. Bonds.

No part of any corporate or cash bond required by Section 32A-5-106 may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-5-4. Insurance.

Public liability and dram shop insurance coverage required in Subsections 32A-5-102(1)(i) and (j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-5-5. Advertising.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(18) that private clubs advertise in a manner that preserves the concept that private clubs are private and not open to the general public.

(3) Application of Rule.

(a) Any public advertising by a private club, its employees, agents, or members, or by any person under contract or agreement with the club shall clearly identify the club as being "a private club for members". In print media, this club identification information must be no smaller than 10 point bold type.

(b) A private club, its employees, agents, or members, or any person under a contract or agreement with the club may not directly or indirectly engage in or participate in any public advertising or promotional scheme that runs counter to the concept that clubs are private and not open to the general public such as:

(i) offering or providing complimentary club memberships or visitor cards to the general public;

(ii) offering or providing full or partial payment of membership fees or dues, or visitor card fees to members of the general public;

(iii) offering or implying an entitlement to a club membership or visitor card to members of the general public; or

(iv) offering to host members of the general public into the club.

R81-5-6. Private Club Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a private club liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-5-7. Private Club Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32A-5-107(28). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-5-8. Sale and Purchase of Alcoholic Beverages.

(1) A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab.

(2) Liquor dispensing shall be in accordance with Section 32A-5-107; and Sections R81-1-9 (Liquor Dispensing Systems), R81-1-10 (Wine Dispensing), and R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-5-9. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the private club as approved by the department.

R81-5-10. Alcoholic Product Flavoring.

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the private club liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No club employee under the age of 21 years may handle alcoholic product flavorings.

R81-5-11. Price Lists.

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any amounts charged by the licensee for the service of packaged liquor, wine or heavy beer and shall be made a part of the house rules of the club, a copy of which shall be kept on the club premises and available at all times for examination by the members, guests, and visitors to the club.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

(3) Customers shall be notified of the price charged for any packaged liquor, wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-5-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-5-13. Brownbagging.

When private social functions or privately hosted events, as defined in 32A-1-105(42), are held on the premises of a licensed private club, the proprietor may, in his or her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:

(1) When the entire club is closed to regular patrons for the private function or event, or

(2) When an entire room or area within the club such as a private banquet room is closed to regular patrons for the private function or event, and members of the private group are restricted to that area, and are not allowed to co-mingle with regular patrons of the club.

R81-5-14. Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(1) through (7) that private clubs operate in a manner that preserves the concept that private clubs are private and not open to the general public.

(3) Application of Rule.

(a) Each private club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club. However, the application fees shall not be less than $4, and the monthly dues may not be less than one dollar per month.

(b) A private club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

(c) Notwithstanding section (3)(b), if a private club is located within a hotel, the hotel may assist the club in the issuance of a club membership to a guest of the hotel under the following conditions:

(i) the guest has booked a room and is staying at the hotel;

(ii) the costs of the membership application fee and membership dues are paid for by the guest either as a separate charge, or as part of the hotel room rate;

(iii) the private club receives payment of the fees and dues for all memberships issued to guests of the hotel;

(iv) the hotel and the club shall maintain a current record of each membership issued to a guest of the hotel as required by the commission;

(v) the records required by subsection (iv) shall be available for inspection by the department; and

(vi) the issuance of the membership is done in accordance with the procedures outlined in 32A-5-107(1) through (4).

R81-5-15. Minors in Lounge or Bar Areas.

(1) Pursuant to 32A-5-107(8)(iv), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of any class A, B, C, or D of private club except when the minor is employed by the club to perform maintenance and cleaning services during hours when the club is not open for business.

(2) "Lounge or bar area" includes:

(a) the bar structure as defined in 32A-1-105(5);

(b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(3) A minor who is otherwise permitted to be on the premises of a class A, B or C private club may momentarily pass through the club's lounge or bar area en route to those areas of the club where the minor is permitted to be. However, no minor shall remain or be seated in the club's bar or lounge area.

R81-5-16. Sexually Oriented Adult Entertainment or Businesses.

(1) Pursuant to 32A-5-107(8)(v), a minor may not be admitted into, use, or be on the premises of any private club that provides sexually oriented adult entertainment or operates as a sexually oriented business. This includes any club:

(a) that is licensed by local authority as a sexually oriented business;

(b) that allows any person on the premises to dance, model, or be or perform in a state of nudity or semi-nudity; or

(c) that shows films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of specified anatomical areas or specified sexual activities.

(2) "Nudity"or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any part of the nipple.

(3) "Semi-nudity" means a state of dress in which any opaque clothing covers the genitals, anus, anal cleft or cleavage, pubic area, and vulva narrower than four inches wide in the front and five inches wide in the back, and less than one inch wide at the narrowest point, and which covers the nipple and areola of the female breast narrower than a two inch radius.

(4) "Specified anatomical areas" means:

(a) human male genitals in a state of sexual arousal; or

(b) less than completely and opaquely covered buttocks, anus, anal cleft or cleavage, male or female genitals, or a female breast.

(5) "Specified sexual activities" means acts of, or simulating:

(a) masturbation;

(b) sexual intercourse;

(c) sexual copulation with a person or a beast;

(d) fellatio;

(e) cunnilingus;

(f) bestiality;

(g) pederasty;

(h) buggery;

(i) sodomy;

(j) excretory functions as part of or in connection with any of the activities set forth in (a) through (i).

R81-5-17. Visitor Cards.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(1) through (7) that private clubs operate in a manner that preserves the concept that private clubs are private and not open to the general public.

(3) Application of Rule.

(a) A private club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to purchase or purchase in full or in part a visitor card for a member of the general public.

(b) Notwithstanding section (3)(a), if a private club is located within a hotel, the hotel may assist the club in the issuance of a visitor card to a guest of the hotel under the following conditions:

(i) the guest has booked a room and is staying at the hotel;

(ii) the cost of the visitor card is paid for by the guest either as a separate charge, or as part of the hotel room rate;

(iii) the private club receives payment of the fees for all visitor cards issued to guests of the hotel;

(iv) the hotel and the club shall maintain a current record of each visitor card issued to a guest of the hotel as required by the commission;

(v) the records required by subsection (iv) shall be kept for a period of three years and shall be available for inspection by the department; and

(vi) the issuance of the visitor card is done in accordance with the procedures outlined in 32A-5-107(6).

KEY: alcoholic beverages

May 1, 2005	**32A-1-107**
Notice of Continuation December 18, 2001	**32A-5-107(18)**
	32A-5-107(23)

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rules.
R156-22-101. Title.

These rules are known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rules".

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 22, as used in Title 58, Chapters 1 and 22, or these rules:

(1) "Complete and final" as used in Section 58-22-603 means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision" as used in Subsection 58-22-102(10) means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee" as used in Subsections 58-22-102(16), 58-22-603(1)(b) and these rules means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys" as used in Subsection 58-22-102(9) include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Recognized jurisdiction" as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country who issues licenses for professional engineers, professional structural engineers, or professional land surveyors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Engineering Credentials Evaluation International and four years of full time engineering experience under supervision of one or more licensed engineers; or eight years of full time engineering experience under supervision of one or more licensed professional engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination (PE) or passing a professional engineering examination that is substantially equivalent to the NCEES Principles and Practice of Engineering Examination.

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time engineering experience under supervision of one or more licensed engineers; or eight years of full time engineering experience under supervision of one or more licensed professional engineers;

(ii) passing the NCEES Structural I and II Examination; and

(iii) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) a two or four year degree in land surveying or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; or eight years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Land Surveying Examination (PLS) or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Land Surveying Examination.

(6) "Responsible charge" by a principal as used in Subsection 58-22-102(7) means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(7) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(8) "Under the direction of the licensee" as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(9) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-22-502.

R156-22-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 22.

R156-22-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined to be equivalent to a EAC/ABET accredited program by the Engineering Credentials Evaluation International. Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the division in collaboration with the board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer.

(2) Education requirements - Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an

equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or masters degree from a curriculum related to land surveying and completion of a minimum of 22 semester hours or 32 quarter hours of course work in land surveying which shall include the following courses:

(a) successful completion of a minimum of one course in each of the following content areas:

(i) boundary law;

(ii) writing legal descriptions;

(iii) public land survey system;

(iv) surveying field techniques; and

(b) the remainder of the 22 semester hours or 32 quarter hours may be made up of successful completion of courses from the following content areas:

(i) photogrammetry;

(ii) studies in land records or land record systems;

(iii) survey instrumentation;

(iv) global positioning systems;

(v) geodesy;

(vi) control systems;

(vii) land development;

(viii) drafting, not to exceed six semester hours or eight quarter hours; and

(ix) algebra, geometry, trigonometry, not to exceed six semester hours or eight quarter hours.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall comply with one or more of the following qualifying experience requirements:

(i) Submit verification of qualifying experience from one or more licensed professional engineers who have provided supervision or who have personal knowledge of the applicant's knowledge, ability, and competence to practice professional engineering documenting completion of a minimum of four calendar years of qualifying experience in professional engineering approved by the division in collaboration with the board in accordance with the following:

(A) Up to one year of qualifying experience may be obtained while enrolled in an engineering program meeting the criteria set forth in Section R156-22-302b(1) if completed before January 1, 2005.

(B) Unlimited qualifying experience may be obtained after meeting the education requirements.

(C) A maximum of three of the four years of qualifying experience may be approved by the board for persons who complete one or more of the following:

(I) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC\ABET.

(II) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET.

(III) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(IV) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(b) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(c) Full or part time employment, research, or teaching for periods of time less than ten weeks in length will not be considered as qualifying experience.

(2) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of three years of professional structural engineering experience from one or more licensed professional engineers or professional structural engineers who have personal knowledge of the applicant's knowledge, ability and competence to practice professional structural engineering, which experience is in addition to the qualifying experience required for licensure as a professional engineer.

(b) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, designed in Uniform Building Code (UBC) seismic zones 2, 3, or 4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure in UBC seismic zones 2, 3, or 4; or

(iii) structural design of any other structure of comparable structural complexity.

(c) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

(A) steel;

(B) concrete;

(C) wood; or

(D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(3) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsections 58-22-302(3)(d), an applicant for licensure as a professional land surveyor shall comply with one or more of the following qualifying experience requirements:

(i) Submit verification of qualifying experience from one or more licensed professional land surveyors who have provided supervision or who have personal knowledge of the applicant's knowledge, ability, field experience and competence to practice professional land surveying in accordance with the following:

(A) Applicants who have met the education requirements in Subsection 58-22-302(3)(d)(i) shall document four years of qualifying experience in land surveying which experience may be obtained before, during or after completing the education requirements for licensure.

(B) Applicants who did not complete the education requirements in Subsection 58-22-302(3)(d)(i) shall document

eight years of qualifying experience in land surveying prior to January 1, 2007.

(b) The four years of qualifying experience required in R156-22-302c(3)(a)(i)(A) and four of the eight years required in R156-22-302c(3)(a)(i)(B) shall comply with the following:

(i) Two years of experience should be specific to field surveying with actual "hands on" surveying, including all of the following:

(A) operation of various instrumentation;

(B) review and understanding of plan and plat data;

(C) public land survey systems;

(D) calculations;

(E) traverse;

(F) staking procedures;

(G) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(ii) Two years of experience should be specific to office surveying, including all of the following:

(A) drafting (includes computer plots and layout);

(B) reduction of notes and field survey data;

(C) research of public records;

(D) preparation and evaluation of legal descriptions; and

(E) preparation of survey related drawings, plats and record of survey maps.

(c) The remaining qualifying experience required in R156-22-302c(3)(a)(i)(B) shall include any aspects of the practice of land surveying under the supervision of a licensed professional land surveyor in accordance with Subsection 58-22-102(16).

(d) Full or part time employment for periods of time less than ten weeks in length will not be considered as qualifying experience.

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES Fundamentals of Engineering (FE) Examination with a passing score as established by the NCEES;

(ii) a NCEES Principles and Practice of Engineering (PE) Examination other than Structural II with a passing score as established by the NCEES; and

(iii) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(b) An applicant must have successfully completed the qualifying experience requirements set forth in Subsection R156-22-302c(1), and have successfully completed the education requirements set forth in Subsection R156-22-302b(1) before being eligible to sit for the NCEES PE examination.

(c) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the following:

(i) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;

(ii) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES; and

(iii) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(b) An applicant must have successfully completed the experience requirements set forth in Subsection R156-22-302c(2) before being eligible to sit for the NCEES Structural Examination(s).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(g), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES Fundamentals of Land Surveying (FLS) Examination with a passing score as established by the NCEES;

(ii) the NCEES Principles and Practice of Land Surveying (PLS) Examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75.

(b) An applicant must have successfully completed the education and qualifying experience requirements set forth in Subsections R156-22-302b(2) and 302c(3) before being eligible to sit for the NCEES PLS examination.

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 20 years preceding the date of the license application, and who was not required to pass the NCEES PE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the board may waive the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the board may waive either the NCEES FLS Examination or the NCEES PLS Examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FLS Examination or the PLS Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on December 31 of each even numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall be required to complete not less than 24 hours of qualified

professional education directly related to the licensee's professional practice.

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

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

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

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

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

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

(4) Credit for qualified continuing professional education shall be recognized in accordance with the following:

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

(b) a maximum of 12 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of professional engineering, professional structural engineering or professional land surveying, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of four hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of eight hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than four of the eight hours may be obtained from such activity in any one organization;

(e) unlimited hours may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

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

(6) If a licensee exceeds the 24 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 12 hours of qualified continuing professional education into the next two year period.

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

(8) Any licensee who fails to timely complete the continuing education required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

R156-22-501. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501, 58-1-501(1)(a) through (d), 58-22-501 and 58-22-503, unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: $400

Second Offense: $1,000

(2) Engaging in, or representing oneself as engaged in the practice of professional engineering or land surveying as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: $400

Second Offense: $1,000

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: $400

Second Offense: $1,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: $600

Second Offense: $1,200

(5) Knowingly permits any person to use his or her license except as permitted by law.

First Offense: $600

Second Offense: $1,200

(6) For third and subsequent offenses a fine of up to $2,000 may be assessed for each day of continued offense as provided in Subsection 58-22-503(1)(i)(iii).

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or

(b) to a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Model Rules of Professional Conduct" of the National Council of Examiners for Engineering and Surveying (NCEES), 1997, which is hereby incorporated by reference.

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer",

"Licensed Professional Engineer", "Registered Professional Engineer", "Certified Structural Engineer", "Structural Engineer", "Licensed Professional Structural Engineer", "Professional Structural Engineer", "Land Surveyor", "Professional Land Surveyor", "Licensed Professional Land Surveyor" or "Licensed Land Surveyor", as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: engineers, surveyors, professional land surveyors, professional engineers

March 1, 2005	**58-22-101**
Notice of Continuation January 13, 2003	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-38b. State Construction Registry Rules.
R156-38b-101. Title.

These rules are known as the "State Construction Registry Rules".

R156-38b-102. Definitions.

In addition to the definitions in Section 38-1-27, State Construction Registry -- Form and contents of notice of commencement, preliminary notice, and notice of completion; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing; which shall apply to these rules, as used in the referenced statutes or these rules:

(1) "Alternate method or process" means transmission by telefax, by U.S. mail, or by private commercial courier.

(2) "Electronic" or "Electronically" means transmission by Internet or by electronic mail and does not mean a transmission by alternate methods or process.

(3) "J2EE" means SUN Microsystem's Java 2 Platform, Enterprise Edition, for multi-tier server-oriented enterprise applications.

(4) "Merge" means to link two or more filings together under a unique project number as required by Subsection 38-1-31(1)(d).

(5) "SCR" means the State Construction Registry established in Sections 38-1-27 and 38-1-30 through 38-1-37.

R156-38b-103. Authority - Purpose.

These rules are adopted by the Division under the authority of Sections 38-1-27 and 38-1-30 through 38-1-37 to administer the SCR.

R156-38b-201. Duties, Functions, and Responsibilities of the Division.

In accordance with Section 38-1-30(3)(a), the duties, functions, and responsibilities of the Division are oversight and enforcement of the Act, and include:

(1) establishing rules to implement the SCR;

(2) providing oversight of the design, operation, and maintenance of the SCR; and

(3) auditing the functionality and integrity of the SCR.

R156-38b-301. Duties, Functions, and Responsibilities of the Designated Agent.

In accordance with Subsection 38-1-30(3)(b), the duties, functions, and responsibilities of the designated agent include:

(1) designing, developing, hosting, operating, and maintaining the SCR;

(2) providing training, marketing, and technical support for the SCR;

(3) performing other duties, functions, and responsibilities provided by statute, rule, or contract; and

(4) obtaining and maintaining insurance coverage as follows:

(a) general liability insurance as required by Subsection 38-1-35(2)(b), which at a minimum shall be the amount established for the designated agent's master contract with the State of Utah; and

(b) errors and omissions insurance as required by Subsection 38-1-30(5), may be satisfied by the designated agent's current policy that insures its parent company and all subsidiaries in the amount of $5 Million.

R156-38b-401. System Reliability.

The designated agent shall provide a reliable hosting environment which shall contain the following elements:

(1) Operating Standard. The SCR shall initially adhere to the J2EE standard and such standard in the future as the Division shall designate in cooperation with the designated agent.

(2) System Upgrades. The designated agent shall notify the Division when the SCR requires an update that may cause significant service interruption. Functional or structural changes that impact the system requirements shall require prior approval from the Division.

(3) Security. The designated agent shall take commercially reasonable steps to provide that the information contained in the SCR is secure and protected from unauthorized entry.

(4) System Backup. The designated agent shall provide adequate backup of the system and its data, including the following:

(a) Redundant Servers. There shall be multiple servers running the SCR and Internet environments, but no more than two sets of servers.

(b) Data Backup Environment. There shall be facilities to continuously back up data contained in the SCR. This backed-up data must be easily retrieved and either viewed or placed back into the SCR if required.

(c) Redundant Power Supply. Provide a single reliable redundant power supply for entire environment.

(5) System Recovery. In the event of a system failure, the designated agent shall provide system recovery and re-deployment to meet a standard that will result in restoration into full production within a maximum of three business days. In the event of destruction of the designated agent's primary hosting facility, the designated agent shall meet a standard whereby complete service restoration could be implemented within two weeks provided the telecommunications and data center vendor can meet this schedule.

(6) Software Licensing. The designated agent shall maintain legitimate software licenses for all purchased software used for the SCR.

(7) System Monitoring. Provide continuous monitoring of SCR environment.

(8) System Support. Provide appropriate personnel to continuously maintain the SCR environment.

(9) Continuity of Operations. In the event that, for whatever reason, operation and maintenance of the SCR is transferred to the state or another designated agent, continuity of the SCR shall be maintained in accordance with the governing contractual provisions with the designated agent.

(10) In the event that the Division elects to provide some of the services listed in (1) through (8) above, the designated agent will be relieved of the responsibilities for the services so assumed. Such election by the Division shall be in writing.

R156-38b-402. User Identification and Password.

(1) All users are required to register with the SCR and be assigned a unique user ID and password to gain access to the SCR. The information gathered in the registration process shall be maintained in the SCR as the user profile. The registration process shall include the following information and any other information established by the Division in collaboration with the designated agent:

(a) first and last name of the individual registering;

(b) entity name if the individual represents an entity, and any DBA name(s);

(c) individual's position or title if the individual represents an entity;

(d) mailing address;

(e) phone number;

(f) email address, if any;

(g) preferred method of submitting payment to the SCR, as defined in a pre-populated pick list.

(2) The SCR shall provide the ability for a user to view and modify the user's profile.

(3) The SCR shall provide an industry accepted secure method for a user to recover a forgotten user ID or password.

(4) The SCR shall pre-populate filings with any information available in the user's profile.

(5) The account will not be effective until the fee, established by the Division in collaboration with the designated agent, is received.

R156-38b-403. Transaction Log.

The designated agent shall maintain a transaction log of the SCR that includes a transaction trail of completed transactions by registered user.

R156-38b-501. Notices of Commencement.

(1) Content Requirements. The content of notices of commencement shall be in accordance with Subsection 38-1-31(2).

(2) Persons Who Must File Notices. In accordance with Subsections 38-1-31(1)(a) and (b), the following are required to file a notice of commencement:

(a) For a construction project where a building permit is issued, within 15 days after the issuance of the building permit, the local government entity issuing that building permit shall input the data and transmit the building permit information to the database electronically or by alternate method and such building permit information shall form the basis of a notice of commencement. The local government entity may not transfer this responsibility to the person who is issued or is to be issued the building permit.

(b) For a construction project where a building permit is not issued, within 15 days after commencement of physical construction work at the project site, the original contractor shall file a notice of commencement with the SCR.

(3) Persons Who May File Notices.

(a) In accordance with Subsection 38-1-31(1)(c), an owner of a construction project, a lender, surety, or other interested party may but is not required to file a notice of commencement with the designated agent within the prescribed time set forth in Subsection 38-1-31(1)(a) or (b).

(4) Methodology.

(a) Electronic notice of commencement filings shall be input into the SCR by the person making the filing and shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of commencement.

(b) Alternate method notice of commencement filings shall be in accordance with this Section and Section R156-38-505.

(c) Checking for Existing Notices. In order to prevent duplicate filings of notices of commencement, a search of the SCR shall be performed for any existing notices of commencement and existing filed amendments before creating a new notice of commencement for a project.

(i) If an existing notice of commencement is identified the following procedures apply:

(A) For an electronic filing by the person attempting to file the new notice of commencement, the SCR shall indicate that a notice of commencement may have already been filed for the project and display the possible notice or notices of commencement that may match the existing project filing. The SCR shall allow the user to review the content of any existing notices to determine whether a notice has already been filed for the project before allowing a new notice to be filed.

(I) If a notice of commencement already exists for the project but the person attempting to file the notice of commencement believes the content of the filing is not accurate, the person shall be given the option of submitting amendments to the content of the notice. The SCR shall reflect the submission date of the amendments, but the filing date of the notice shall remain unchanged. If the person attempting to file the new notice of commencement believes the existing notice is accurate, the system shall permit the proposed new filing to be terminated.

(B) For an alternate method filing, input by the designated agent for the person filing the notice of commencement, the designated agent shall notify the person by electronic or alternate method as specified by the filer, that a notice of commencement has already been filed for the particular project and include a copy of the existing notice of commencement. In addition, the user will be notified that the notice of commencement will be added to the construction project as an amendment to the original filing in the SCR and the appropriate fee will be charged.

(ii) As part of the process described in Subsection R156-38b-501(4)(c)(i), the SCR search for an existing notice of commencement shall display, for review by the person who submitted the search parameters, all notice of commencement filings that fit the search parameters indicated by the submission that prompted the search. The purpose of this requirement is to enable the person to properly identify any existing notice of commencement before a new notice of commencement is created, to avoid duplicate notice of commencement filings.

(iii) If no existing notice of commencement is identified for the particular project, the SCR shall allow the person who submitted the filing to file a new notice of commencement.

(d) Creation of New Notices.

(i) A new notice of commencement shall not be accepted into the SCR until the SCR system has checked for an existing notice in accordance with the procedures outlined in Subsection R156-38b-501(4).

(ii) In accordance with Subsection 38-1-31(1)(d), when a new notice of commencement filing is accepted into the SCR, the SCR shall assign the project a unique project number that identifies the project and can be associated with all future notices of commencement, preliminary notices, notices of completion, and requests for notification applicable to the project.

(e) Merging of Duplicate Filings. Duplicate filings shall be avoided to the extent possible in accordance with the procedure outlined in this Subsection. The SCR shall include functionality to allow a person who has successfully filed a notice of commencement which duplicates another notice of commencement already in the SCR to merge the notice of commencement with the existing notice of commencement filing.

(i) The SCR shall reflect the effective date of the merger.

(ii) The SCR shall provide notification of the merger to all persons who are associated with either notice of commencement filing, including those who have filed preliminary notices.

(iii) The effective date of a merger reflects the date the unique merger number was cross-referenced to duplicate notice of commencement filings. A merger does not dissolve or affect the filing dates, or the consequences of the filing dates, of the notices being combined.

(f) Resolving Multiple or Inconsistent Property Descriptions.

(i) The person making a notice of commencement filing shall be responsible for correctly identifying a project, and for the consequences of failing to correctly identify a project.

(ii) Neither the division nor the designated agent shall be responsible for the consequences of a person making a notice of commencement filing that identifies a project in such a way that the SCR is unable to identify an existing notice of commencement for the project, according to the search criteria established by the Division in collaboration with the designated agent, nor for the SCR allowing the person to make a successful duplicate notice of commencement filing with a different description of the project.

R156-38b-502. Preliminary Notices.

(1) Content Requirements. The content of a Preliminary Notice shall be in accordance with Subsection 38-1-32(1)(d).

(2) Methodology.

(a) Electronic preliminary notice filings shall be input into the SCR entry screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a preliminary notice. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for the accuracy, suitability or coherence of the data.

(b) Alternate method preliminary notice filings shall be in accordance with Section R156-38b-505.

(c) Preliminary notice filing submitted before notice of commencement filing.

(i) A preliminary notice for a project may not be filed until the project has an existing notice of commencement. A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed may either:

(A) file the notice of commencement as an interested party to enable the filing of the preliminary notice; or

(B) wait for the notice of commencement to be filed by someone else to enable the filing of his or her preliminary notice.

(i) A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed and who can identify the project, using the building permit number or other identifier adopted by the Division in collaboration with the designated agent, may request notification of the filing of a notice of commencement for the project.

(ii) A preliminary notice filing that is not accepted by the SCR because it is submitted before a notice of commencement has been filed shall be in accordance with Section R156-38b-507.

R156-38b-503. Notices of Completion.

(1) Content Requirements. In accordance with Section 38-1-33, the content of a notice of completion shall include the indication of the status of the filer as an owner of the project, an original contractor, a lender that has provided financing for the project, or a surety that has provided bonding for the project; identification of the construction project by a means acceptable to the Division in collaboration with the designated agent to which the notice of completion applies; and a declaration of how final completion was determined, in particular, whether completion was determined by:

(a) the issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project as specified in Subsection 38-1-33(1)(a)(i);

(b) the final inspection of the construction project by the local government entity having jurisdiction over the construction project because no certificate of occupancy was required, as specified in Subsection 38-1-33(1)(a)(ii); or

(c) a determination that no substantial work remained to be completed to finish the construction project because no certificate of occupancy or final inspection were required, as specified in Subsection 38-1-33(1)(a)(iii);

(2) Methodology.

(a) Electronic notice of completion filings shall be input into the SCR input screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of completion. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for validating the accuracy, suitability or coherence of the data.

(b) Alternate method notice of completion filings shall be in accordance with Section R156-38b-505.

R156-38b-504. Required Notifications and Requests for Notifications.

(1) Required Notifications. The designated agent or the SCR shall send the following required notifications:

(a) notification of the filing of a notice of commencement to a person who has filed a notice of commencement for the project, as required by Subsection 38-1-31(4)(a);

(b) notification of the filing of a preliminary notice to the person who filed the preliminary notice, as required by Subsection 38-1-32(2)(a)(i);

(c) notification of the filing of a preliminary notice to each person who filed a notice of commencement for the project, as required by Subsection 38-1-32(2)(a)(ii);

(d) notification of the filing of a notice of completion to each person who filed a notice of commencement for the project, as required by Subsection 38-1-33(1)(d)(i)(A); and

(e) notification of the filing of a notice of completion to each person who filed a preliminary notice for the project, as required by Subsection 38-1-33(d)(d)(i)(B).

(2) Permissible Requests for Notifications. The following requests for notifications may be submitted to the SCR:

(a) requests by any interested person who requests notification of the filing of a notice of commencement for a project, as permitted by Subsection 38-1-31(4)(b);

(b) requests by any interested person who requests notification of the filing of a preliminary notice, as permitted by Subsection 38-1-32(2)(a)(iii); and

(c) requests by any interested person who requests notification of the filing of a notice of completion, as permitted by Subsection 38-1-33(1)(d)(i)(C).

(3) Content Requirements for Requests for Notification. The content of a request for notification shall include:

(i) identification of the project by a method designated by the Division in collaboration with the designated agent;

(ii) name of the requestor;

(iii) the filing for which notification is requested; and

(iv) an electronic or alternate method address or telefax number for a response.

(4) Methodology.

(a) Automatic Response System. The SCR shall, to the extent practicable, be designed to require or generate the necessary information to support an automatic response system and documentation of automatic response system in order to handle requests for and required sending of notifications.

(b) Necessary Information. The information to be required from filers or generated to enable an automatic response system and documentation of response system shall include:

(i) the date requests for notification were accepted;

(ii) the method by which requests for notification are to be sent;

(iii) unique identification of the construction project;

(iv) the date a notification is sent in response to a requests for notification; and

(v) the mailing address, electronic mail address, or telefax number used to respond to a request for notification.

(c) Electronic Requests. Electronic requests shall be responded to electronically unless directed otherwise by the person filing the request.

(d) Alternate Method or Process Requests. Alternate method requests shall be responded to in the method requested by the requestor.

R156-38b-505. Alternate Filings.

(1) Alternate Methods of Filing. The alternate methods of filing are those established by Subsections 38-1-27(2)(e)(ii), i.e., U.S. Mail and telefax. Private commercial courier is established as an additional alternate method of receipt by the designated agent, but not dispatch from the designated agent.

(2) Content Requirements. The content requirements for alternate method filings shall be the same as for electronic

filings as set forth for Notices of Commencement, Preliminary Notices, and Notices of Completion in Sections 38-1-31, 38-1-32, and 38-1-33, respectively, or these rules.

(3) Format Requirements. Alternate method filings shall be submitted in a standard format adopted by the Division in collaboration with the designated agent. Filings not submitted in the standard format, in the sole judgment of the designated agent, shall be rejected and dispatched to the submitter. The filing fee shall be retained by the designated agent as a processing fee for rejecting and dispatching the filing. An additional filing fee shall be due upon resubmission.

(4) Methodology.

(a) U.S. Mail. An alternate method filing by U.S. Mail shall be submitted to the designated agent's mailing address by any method of U.S. Mail.

(b) Express Mail. An alternate method filing by commercial private courier shall be submitted to the designated agent's mailing address by any commercially available method of express mail.

(c) Telefax. An alternate method filing by telefax shall be submitted to the designated agent's toll-free unique SCR fax number.

(5) Processing Requirements.

(a) Transaction Receipt. The designated agent shall confirm a successful alternate method filing and fee payment receipt by sending a transaction receipt as specified in Section R156-38b-602.

(b) Creation of Electronic Image. The designated agent shall create and maintain an electronic image of alternate method filings that are accepted into the SCR. Once an electronic image has been created and the accepted alternate method filing has been entered into the SCR, the original version of the accepted alternate method filing may be destroyed. The electronic image shall remain accessible for audit purposes.

R156-38b-506. Dates of Filings.

The official filing date of a particular filing shall be determined as follows:

(1) In the case of an electronic filing, it shall be the date the SCR accepts a filing input by the person making the filing and makes available a payment receipt to the person making the filing.

(2) In the case of an alternate method filing, it shall be the date upon which the designated agent received a filing that was ultimately accepted into the SCR including content requirements and payment.

R156-38b-507. Status of and Process for Filings Not Accepted by the SCR.

(1) A filing that is not accepted by the SCR shall not be considered to be filed.

(2) The SCR shall electronically indicate to a person whose electronic filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The SCR shall allow the person making the electronic filing attempt to correct the defect or defects, if possible.

(3) The designated agent shall notify a person whose alternate method filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The designated agent shall allow the person making the alternate filing to correct the defect or defects.

(4) A fee payment received with a filing submitted by alternate process that is not accepted shall be retained by the designated agent as the processing fee for handling the incomplete filing.

(5) For auditing purposes, the SCR shall maintain a record of all processing fees received with filings submitted by alternate process that are not accepted.

R156-38b-508. Correction of Filings.

(1) A person who submits a filing may submit a correction of the filing electronically or by alternate filing.

(2) A correction of filing shall not require a new fee payment unless submitted by alternate process or by a method of electronic process that requires manual input by the designated agent.

(3) A correction of filing shall not affect the date of filing for the filing being corrected. The date of filing for the correction of filing shall be as specified in Section R156-38b-506.

(4) Notification of the correction of filing shall be provided to the same persons as required for the filing being corrected.

R156-38b-509. Cancellation of Filings.

(1) In accordance with Subsections 38-1-32(3) and 38-1-33(2), the SCR shall, upon request of a person who filed an accepted preliminary notice or notice of completion, allow:

(i) a person who completed a filing who electronically requests cancellation of the filing to designate the filing as canceled; and

(ii) a person who completed a filing who by alternate process requests cancellation of the filing to have the filing placed in a canceled by the designated agent.

(2) Notification of the cancellation of a filing shall be provided to the same persons as required for the original successful filing.

(3) A canceled filing shall indicate that the filing is no longer given effect.

(4) A canceled filing may not be restored, but must be filed as a new filing in accordance with Sections 38-1-32 or 38-1-33.

R156-38b-510. Data Contained in the SCR.

The SCR is intended as a public repository of the information contained in the filings required or permitted by law. The SCR has the responsibility to post but not validate the accuracy, suitability or coherence of the information received in filings included within the SCR.

R156-38b-601. Fee Payment Methods.

(1) Pay-as-you-go Account. Payments may be made online by a credit card transaction in the amount established by the Division in collaboration with the designated agent. For alternate method filings, users will have the option of sending in a check or credit card information with their filing.

(2) Monthly Accounts. Payments may be made by a monthly account as specified by the Division in collaboration with the designated agent, as follows:

(i) an account in which the designated agent charges monthly fees to a credit card or bank account designated and authorized by the registered user; or

(ii) an account, guaranteed by a credit card, in which the designated agent sends a monthly invoice to be paid by the registered user within 30 days.

R156-38b-602. Transaction Receipts.

(1) In accordance with Subsection 38-1-27(2)(g), the SCR shall make available a transaction receipt upon acceptance of a filing into the SCR. The receipt shall indicate:

(a) the amount of any fee payment being processed;

(b) that the filing is accepted by the SCR;

(c) the date and time of the filing's acceptance; and

(d) the content of the accepted filing.

(2) It shall be the responsibility of the person making an electronic filing to print out a transaction receipt, if the person wishes a hard copy of the receipt.

(3) The designated agent shall send a transaction receipt

to a person who submits a filing by alternate method that is accepted.

R156-38b-603. Fee Payment Accounting.

The designated agent shall be responsible for keeping accurate records to account for all fee payments, including filing fee payments and registration payments for access to SCR data. The designated agent shall make its accounting records available to the Division upon notification for auditing purposes.

R156-38b-604. Fee Payment Collection.

The designated agent shall be responsible for conducting or contracting for all fee payment collection activities and shall document or require to be documented such activities. The designated agent shall make its collection activity records available to the Division upon notification, for auditing purposes.

R156-38b-701. Indexing of State Construction Registry.

The SCR shall be indexed in accordance with Subsection 38-1-27(3)(b).

R156-38b-702. Archiving Requirements.

(1) In accordance with Subsection 38-1-30(4)(a), the designated agent shall archive the SCR computer data files semi-annually for auditing purposes.

(2) In accordance with Subsection 38-1-30(4)(c), filings shall be archived as follows:

(a) one year after the day on which a notice of completion is accepted into the SCR;

(b) if no notice of completion is filed, two years after the last filing activity for a project; or

(c) one year after the day on which a filing is canceled under Subsection 38-1-32(3)(c) or 38-1-33(2)(c).

(3) For purposes of this section, "archive" means to preserve an original or a copy of computer data files and filings separate from the active SCR.

(4) The designated agent shall maintain a transaction log of archived filings and make it available to the Division upon request for auditing purposes.

R156-38b-703. SCR Record Classification.

With the exception of any data that is subclassified as a private record, the SCR shall be classified by the Division under Title 63, Chapter 2, Government Records Access and Management Act (GRAMA), as a public record series.

R156-38b-704. Registered User Access to SCR Data.

In accordance with Subsections 38-1-27(2) and (3), and 38-1-30(3), construction projects in the SCR shall be accessible to an interested person who has registered with the SCR and has been assigned a unique user ID and password to gain access to the SCR.

R156-38b-705. Public Access to SCR Data.

Requests for public access to SCR data shall be handled in accordance with Subsection 38-1-27(5).

KEY: electronic preliminary lien filing, notice of commencement, preliminary notice, notice of completion
April 18, 2005 38-1-30(3)

R307. Environmental Quality, Air Quality.
R307-210. Stationary Sources.
R307-210-1. Standards of Performance for New Stationary Sources (NSPS).

The provisions of 40 Code of Federal Regulations (CFR) Part 60, effective on July 1, 2004, and amended by 64 FR 41346 (July 8, 2004), are incorporated by reference into these rules with the exception that references in 40 CFR to "Administrator" shall mean "executive secretary" unless by federal law the authority referenced is specific to the Administrator and cannot be delegated.

KEY: air pollution, stationary sources, new source review
April 19, 2005 19-2-104
Notice of Continuation August 15, 2001 19-2-108

R309. Environmental Quality, Drinking Water.
R309-600. Drinking Water Source Protection For Ground-Water Sources.
R309-600-1. Authority.

Under authority of Section 19-4-104(1)(a)(iv), the Drinking Water Board adopts this rule which governs the protection of ground-water sources of drinking water.

R309-600-2. Purpose.

Public Water Systems (PWSs) are responsible for protecting their sources of drinking water from contamination. R309-600 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their ground-water sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

R309-600 applies to ground-water sources and to ground-water sources which are under the direct influence of surface water which are used by PWSs to supply their systems with drinking water. However, compliance with this rule is voluntary for existing ground-water sources of drinking water which are used by public (transient) non-community water systems.

R309-600-3. Implementation.

(1) New Ground-Water Sources - Each PWS shall submit a Preliminary Evaluation Report (PER) in accordance with R309-600-13(2) for each of its new ground-water sources to the Division of Drinking Water (DDW). A PWS shall not begin construction of a new source until the Executive Secretary concurs with its PER.

(2) Existing Ground-Water Sources - Each PWS shall submit a Drinking Water Source Protection (DWSP) Plan in accordance with R309-600-7(1) for each of its existing ground-water sources to DDW according to the following schedule. Well fields or groups of springs may be considered to be a single source.

TABLE 1

Population Served By PWS:	Percent Of Sources:	DWSP Plans Due By:
Over 10,000	50% of wells	December 31, 1995
Over 10,000	100% of wells	December 31, 1996
3,300-10,000	100% of wells	December 31, 1997
Less than 3,300	100% of wells	December 31, 1998
Springs and other sources	100%	December 31, 1999

(3) DWSP for existing ground-water sources under the direct influence of surface water shall be accomplished through delineation of both the ground water and surface water contribution areas. The requirements of R309-600-7(1) apply to the ground water portion and the requirements of R309-605 apply to the surface water portion, except that the schedule for submitting these DWSP plans to DDW is based on the schedule in R309-605-3(1).

(4) PWSs shall maintain all land use agreements which were established under previous rules to protect their ground-water sources of drinking water from contamination.

R309-600-4. Exceptions.

(1) Exceptions to the requirements of R309-600 or parts thereof may be granted by the Executive Secretary to PWSs if: due to compelling factors (which may include economic factors), a PWS is unable to comply with these requirements, and the granting of an exception will not result in an unreasonable risk to health.

(2) The Executive Secretary may prescribe a schedule by which the PWS must come into compliance with the requirements of R309-600.

R309-600-5. Designated Person.

(1) A designated person shall be appointed and reported in writing to the Executive Secretary by each PWS within 180 days of the effective date of R309-600. The designated person's address and telephone number shall be included in the written correspondence. Additionally, the above information must be included in each DWSP Plan and PER that is submitted to DDW.

(2) Each PWS shall notify the Executive Secretary in writing within 30 days of any changes in the appointment of a designated person.

R309-600-6. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) "Collection area" means the area surrounding a ground-water source which is underlain by collection pipes, tile, tunnels, infiltration boxes, or other ground-water collection devices.

(b) "Controls" means the codes, ordinances, rules, and regulations currently in effect to regulate a potential contamination source. "Controls" also means physical controls which may prevent contaminants from migrating off of a site and into surface or ground water. "Controls" also means negligible quantities of contaminants.

(c) "Criteria" means the conceptual standards that form the basis for DWSP area delineation to include distance, ground-water time of travel, aquifer boundaries, and ground-water divides.

(d) "Criteria threshold" means a value or set of values selected to represent the limits above or below which a given criterion will cease to provide the desired degree of protection.

(e) "DDW" means Division of Drinking Water.

(f) "DWSP Program" means the program to protect drinking water source protection zones and management areas from contaminants that may have an adverse effect on the health of persons.

(g) "DWSP Zone" means the surface and subsurface area surrounding a ground-water source of drinking water supplying a PWS, through which contaminants are reasonably likely to move toward and reach such ground-water source.

(h) "Designated person" means the person appointed by a PWS to ensure that the requirements of R309-600 are met.

(i) "Engineer" means a person licensed under the Professional Engineers and Land Surveyors Licensing Act, 58-22 of the Utah Code, as a "professional engineer" as defined therein.

(j) "Executive Secretary" means the individual authorized by the Drinking Water Board to conduct business on its behalf.

(k) "Existing ground-water source of drinking water" means a public supply ground-water source for which plans and specifications were submitted to DDW on or before July 26, 1993.

(l) "Geologist" means a person licensed under the Professional Geologist Licensing Act, 58-76 of the Utah Code, as a "professional geologist" as defined therein.

(m) "Ground-water Source" means any well, spring, tunnel, adit, or other underground opening from or through which ground-water flows or is pumped from subsurface water-bearing formations.

(n) "Hydrogeologic methods" means the techniques used to translate selected criteria and criteria thresholds into mappable delineation boundaries. These methods include, but are not limited to, arbitrary fixed radii, analytical calculations and models, hydrogeologic mapping, and numerical flow models.

(o) "Land management strategies" means zoning and non-zoning strategies which include, but are not limited to, the following: zoning and subdivision ordinances, site plan

reviews, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, ground-water monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, written contracts and agreements, and so forth.

(p) "Land use agreement" means a written agreement wherein the owner(s) agrees not to locate or allow the location of uncontrolled potential contamination sources or pollution sources within zone one of new wells in protected aquifers. The owner(s) must also agree not to locate or allow the location of pollution sources within zone two of new wells in unprotected aquifers and new springs unless the pollution source agrees to install design standards which prevent contaminated discharges to ground water. This restriction must be binding on all heirs, successors, and assigns. Land use agreements must be recorded with the property description in the local county recorder's office. Refer to R309-600-13(2)(d).

Land use agreements for protection areas on publicly owned lands need not be recorded in the local county recorder office. However, a letter must be obtained from the Administrator of the land in question and meet the requirements described above.

(q) "Management area" means the area outside of zone one and within a two-mile radius where the Optional Two-mile Radius Delineation Procedure has been used to identify a protection area.

For wells, land may be excluded from the DWSP management area at locations where it is more than 100 feet lower in elevation than the total drilled depth of the well.

For springs and tunnels, the DWSP management area is all land at elevation equal to or higher than, and within a two-mile radius, of the spring or tunnel collection area. The DWSP management area also includes all land lower in elevation than, and within 100 horizontal feet, of the spring or tunnel collection area. The elevation datum to be used is the point of water collection. Land may also be excluded from the DWSP management area at locations where it is separated from the ground-water source by a surface drainage which is lower in elevation than the spring or tunnel collection area.

(r) "New ground-water source of drinking water" means a public supply ground-water source of drinking water for which plans and specifications are submitted to DDW after July 26, 1993.

(s) "Nonpoint source" means any diffuse source of pollutants or contaminants not otherwise defined as a point source.

(t) "PWS" means public water system.

(u) "Point source" means any discernible, confined, and discrete source of pollutants or contaminants, including but not limited to any site, pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation with more than ten animal units, landfill, or vessel or other floating craft, from which pollutants are or may be discharged.

(v) "Pollution source" means point source discharges of contaminants to ground water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in SARA Title III. Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, landfilling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than ten animal units.

The following definitions are part of R309-600 and clarify the meaning of "pollution source:"

(i) "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

(ii) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(iii) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of the "Title III List of Lists: Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-to-Know Act (EPCRA) and Section 112(R) of the Clean Air Act, As Amended," (550B98017). A copy of this document may be obtained from: NCEPI, PO Box 42419, Cincinnati, OH 45202. Online ordering is also available at http://www.epa.gov/ncepihom/orderpub.html.

(w) "Potential contamination source" means any facility or site which employs an activity or procedure which may potentially contaminate ground water. A pollution source is also a potential contamination source.

(x) "Protected aquifer" means a producing aquifer in which the following conditions are met:

(i) A naturally protective layer of clay, at least 30 feet in thickness, is present above the aquifer;

(ii) the PWS provides data to indicate the lateral continuity of the clay layer to the extent of zone two; and

(iii) the public-supply well is grouted with a grout seal that extends from the ground surface down to at least 100 feet below the surface, and for a thickness of at least 30 feet through the protective clay layer.

(y) "Replacement well" means a public-supply well drilled for the sole purpose of replacing an existing public-supply well which is impaired or made useless by structural difficulties and in which the following conditions are met:

(i) the proposed well location shall be within a radius of 150 feet from an existing ground-water supply well, as defined in R309-600-6(1)(k); and

(ii) the PWS provides a copy of the replacement application approved by the State Engineer (refer to Section 73-3-28 of the Utah Code Annotated).

(z) "Time of travel" means the time required for a particle of water to move in the producing aquifer from a specific point to a ground-water source of drinking water.

(aa) "Unprotected aquifer" means any aquifer that does not meet the definition of a protected aquifer.

(bb) "Wellhead" means the physical structure, facility, or device at the land surface from or through which ground-water flows or is pumped from subsurface, water-bearing formations.

R309-600-7. DWSP Plans.

(1) Each PWS shall develop, submit, and implement a DWSP Plan for each of its ground-water sources of drinking water.

Required Sections for DWSP Plans - DWSP Plans should be developed in accordance with the "Standard Report Format for Existing Wells and Springs." This document may be obtained from DDW. DWSP Plans must include the following seven sections:

(a) DWSP Delineation Report - A DWSP Delineation

Report in accordance with R309-600-9(5) is the first section of a DWSP Plan.

(b) Potential Contamination Source Inventory and Assessment of Controls - A Prioritized Inventory of Potential Contamination Sources and an assessment of their controls in accordance with R309-600-10 is the second section of a DWSP Plan.

(c) Management Program to Control Each Preexisting Potential Contamination Source - A Management Program to Control Each Preexisting Potential Contamination Source in accordance with R309-600-11 is the third section of a DWSP Plan.

(d) Management Program to Control or Prohibit Future Potential Contamination Sources - A Plan for Controlling or Prohibiting Future Potential Contamination Sources is the fourth section of a DWSP Plan. This must be in accordance with R309-600-12, consistent with the general provisions of this rule, and implemented to an extent allowed under the PWS's authority and jurisdiction.

(e) Implementation Schedule - Each PWS shall develop a step-by-step implementation schedule which lists each of its proposed land management strategies with an implementation date for each strategy.

(f) Resource Evaluation - Each PWS shall assess the financial and other resources which may be required for it to implement each of its DWSP Plans and determine how these resources may be acquired.

(g) Recordkeeping - Each PWS shall document changes in each of its DWSP Plans as they are continuously updated to show current conditions in the protection zones and management areas. As a DWSP Plan is executed, the PWS shall document any land management strategies that are implemented. These documents may include any of the following: ordinances, codes, permits, memoranda of understanding, public education programs, public notifications, and so forth.

(2) DWSP Plan Administration - DWSP Plans shall be submitted, corrected, retained, implemented, updated, and revised according to the following:

(a) Submitting DWSP Plans - Each PWS shall submit a DWSP Plan to DDW in accordance with the schedule in R309-600-3 for each of its ground-water sources of drinking water.

(b) Correcting Deficiencies - Each PWS shall correct any deficiencies in a disapproved DWSP Plan and resubmit it to DDW within 90 days of the disapproval date.

(c) Retaining DWSP Plans - Each PWS shall retain on its premises a current copy of each of its DWSP Plans.

(d) Implementing DWSP Plans - Each PWS shall begin implementing each of its DWSP Plans in accordance with its schedule in R309-600-7(1)(e), within 180 days after submittal if they are not disapproved by the Executive Secretary.

(e) Updating and Resubmitting DWSP Plans - Each PWS shall update its DWSP Plans as often as necessary to ensure they show current conditions in the DWSP zones and management areas. Updated plans also document the implementation of land management strategies in the recordkeeping section. Actual copies of any ordinances, codes, permits, memoranda of understanding, public education programs, bill stuffers, newsletters, training session agendas, minutes of meetings, memoranda for file, etc. must be submitted with the recordkeeping section of updated plans. DWSP Plans are initially due according to the schedule in R309-600-3. Thereafter, updated DWSP Plans are due every six years from their original due date. This applies even though a PWS may have been granted an extension beyond the original due date.

(f) Revising DWSP Plans - Each PWS shall submit a revised DWSP Plan to DDW within 180 days after the reconstruction or redevelopment of any ground-water source of drinking water which addresses changes in source construction, source development, hydrogeology, delineation, potential contamination sources, and proposed land management strategies.

R309-600-8. DWSP Plan Review.

(1) The Executive Secretary shall review each DWSP Plan submitted by PWSs and "concur," "concur with recommendations," "conditionally concur" or "disapprove" the plan.

(2) The Executive Secretary may "disapprove" DWSP Plans for any of the following reasons:

(a) An inaccurate DWSP Delineation Report, a report that uses a non-applicable delineation method, or a DWSP Plan that is missing this report or any of the information and data required in it (refer to R309-600-9(6));

(b) an inaccurate Prioritized Inventory of Potential Contamination Sources or a DWSP Plan that is missing this report or any of the information required in it (refer to R309-600-10(1));

(c) an inaccurate assessment of current controls (refer to R309-600-10(2));

(d) a missing Management Program to Control Each Preexisting Potential Contamination Source which has been assessed as "not adequately controlled" by the PWS (refer to R309-600-11(1));

(e) a missing Management Program to Control or Prohibit Future Potential Contamination Sources (refer to R309-600-12);

(f) a missing or incomplete Implementation Schedule, Resource Evaluation, Recordkeeping Section, Contingency Plan, or Public Notification Plan (refer to R309-600-7(1)(e)-(g), R309-600-14, and R309-600-15).

(3) The Executive Secretary may "concur with recommendations" when PWSs propose management programs to control preexisting potential contamination sources or management programs to control or prohibit future potential contamination sources for existing or new drinking water sources which appear inadequate or ineffective.

(4) The Executive Secretary may "conditionally concur" with a DWSP Plan or PER. The PWS must implement the conditions and report compliance the next time the DWSP Plan is due and submitted to DDW.

R309-600-9. Delineation of Protection Zones and Management Areas.

(1) PWSs shall delineate protection zones or a management area around each of their ground-water sources of drinking water using the Preferred Delineation Procedure or the Optional Two-mile Radius Delineation Procedure. The hydrogeologic method used by PWSs shall produce protection zones or a management area in accordance with the criteria thresholds below. PWSs may also choose to verify protected aquifer conditions to reduce the level of management controls applied in applicable protection areas.

(2) Reports must be prepared by a qualified licensed professional - A submitted report which addresses any of the following sections shall be stamped and signed by a professional geologist or professional engineer:

(a) A Delineation Report for Estimated DWSP Zones produced using the Preferred Delineation Procedure, as explained in R309-600-13(2)(a);

(b) a DWSP Delineation Report produced using the Preferred Delineation Procedure, as explained in R309-600-9(3)(a) and (6)(a);

(c) a report to verify protected aquifer conditions, as explained in R309-600-9(4) and (7);

(d) a report which addresses special conditions, as explained in R309-600-9(5); or

(e) a Hydrogeologic Report to Exclude a Potential Contamination Source, as explained in R309-600-9(6)(b)(ii).

(3) Criteria Thresholds for Ground-water Sources of

Drinking Water:

(a) Preferred Delineation Procedure - Four zones are delineated for management purposes:

(i) Zone one is the area within a 100-foot radius from the wellhead or margin of the collection area.

(ii) Zone two is the area within a 250-day ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculations shall be based on this data.

(iii) Zone three (waiver criteria zone) is the area within a 3-year ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculations shall be based on this data.

(iv) Zone four is the area within a 15-year ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculation shall be based on this data.

(b) Optional Two-mile Radius Delineation Procedure - In place of the Preferred Delineation Procedure, PWSs may choose to use the Optional Two-mile Radius Delineation Procedure to delineate a management area. This procedure is best applied in remote areas where few if any potential contamination sources are located. Refer to R309-600-6(1)(q) for the definition of a management area.

(4) Protected Aquifer Classification - PWSs may choose to verify protected aquifer conditions to reduce the level of management controls for a public-supply well which produces water from a protected aquifer(s) or to meet one of the requirements of a VOC or pesticide susceptibility waiver (R309-600-16(4)). Refer to R309-600-6(1)(x) for the definition of a "protected aquifer."

(5) Special Conditions - Special scientific or engineering studies may be conducted to support a request for an exception (refer to R309-600-4) due to special conditions. These studies must be approved by the Executive Secretary before the PWS begins the study. Special studies may include confined aquifer conditions, ground-water movement through protective layers, wastewater transport and fate, etc.

(6) DWSP Delineation Report - Each PWS shall submit a DWSP Delineation Report to DDW for each of its ground-water sources using the Preferred Delineation Procedure or the Optional Two-mile Radius Delineation Procedure.

(a) Preferred Delineation Procedure - Delineation reports for protection zones delineated using the Preferred Delineation Procedure shall include the following information and a list of all sources or references for this information:

(i) Geologic Data - A brief description of geologic features and aquifer characteristics observed in the well and area of the potential protection zones. This should include the formal or informal stratigraphic name(s), lithology of the aquifer(s) and confining unit(s), and description of fractures and solution cavities (size, abundance, spacing, orientation) and faults (brief description of location in or near the well, and orientation). Lithologic descriptions can be obtained from surface hand samples or well cuttings; core samples and laboratory analyses are not necessary. Fractures, solution cavities, and faults may be described from surface outcrops or drill logs.

(ii) Well Construction Data - If the source is a well, the report shall include the well drillers log, elevation of the wellhead, borehole radius, casing radius, total depth of the well, depth and length of the screened or perforated interval(s), well screen or perforation type, casing type, method of well construction, type of pump, location of pump in the well, and the maximum projected pumping rate of the well. The maximum pumping rate of the well must be used in the delineation calculations. Averaged pumping rate values shall not be used.

(iii) Spring Construction Data - If the source is a spring or tunnel the report shall include a description or diagram of the collection area and method of ground-water collection.

(iv) Aquifer Data for New Wells - A summary report including the calculated hydraulic conductivity of the aquifer, transmissivity, hydraulic gradient, direction of ground-water flow, estimated effective porosity, and saturated thickness of the producing aquifer(s). The PWS shall obtain the hydraulic conductivity of the aquifer from a constant-rate aquifer test and provide the data as described in R309-204-6(10)(b). Estimated effective porosity must be between 1% and 30%. Clay layers shall not be included in calculations of aquifer thickness or estimated effective porosity. This report shall include graphs, data, or printouts showing the interpretation of the aquifer test.

(v) Aquifer Data for Existing Wells - A summary report including the calculated hydraulic conductivity of the aquifer, transmissivity, hydraulic gradient, direction of ground-water flow, estimated effective porosity, and saturated thickness of the producing aquifer(s). The PWS shall obtain the hydraulic conductivity of the aquifer from a constant-rate aquifer test using the existing pumping equipment. Aquifer tests using observation wells are encouraged, but are not required. If a previously performed aquifer test is available and includes the required data described below, data from that test may be used instead. Estimated effective porosity must be between 1% and 30%. Clay layers shall not be included in calculations of aquifer thickness or estimated effective porosity. This report shall include graphs, data, or printouts showing the interpretation of the aquifer test.

If a constant-rate aquifer test is not practical, then the PWS shall obtain hydraulic conductivity of the aquifer using another appropriate method, such as data from a nearby well in the same aquifer, specific capacity of the well, published hydrogeologic studies of the same aquifer, or local or regional ground-water models. A constant-rate test may not be practical for such reasons as insufficient drawdown in the well, inaccessibility of the well for water-level measurements, or insufficient overflow capacity for the pumped water.

The constant-rate test shall:

(A) Provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours. Stabilized drawdown is achieved when there is less than one foot of change of ground-water level in the well within a six-hour period.

(B) Provide data as described in R309-204-6(10)(b)(v) through (vii).

(vi) Additional Data for Observation Wells - If the aquifer test is conducted using observation wells, the report shall include the following information for each observation well: location and surface elevation; total depth; depth and length of the screened or perforated intervals; radius, casing type, screen or perforation type, and method of construction; prepumping ground-water level; the time-drawdown or distance-drawdown data and curve; and the total drawdown.

(vii) Hydrogeologic Methods and Calculations - These include the ground-water model or other hydrogeologic method used to delineate the protection zones, all applicable equations, values, and the calculations which determine the delineated boundaries of zones two, three, and four. The hydrogeologic method or ground-water model must be reasonably applicable for the aquifer setting. For wells, the hydrogeologic method or

ground-water model must include the effects of drawdown (increased hydraulic gradient near the well) and interference from other wells.

(viii) Map Showing Boundaries of the DWSP Zones - A map showing the location of the ground-water source of drinking water and the boundary for each DWSP zone. The base map shall be a 1:24,000-scale (7.5-minute series) topographic map, such as is published by the U.S. Geological Survey. Although zone one (100-foot radius around the well or margin of the collection area) need not be on the map, the complete boundaries for zones two, three, and four must be drawn and labeled. More detailed maps are optional and may be submitted in addition to the map required above.

The PWS shall also include a written description of the distances which define the delineated boundaries of zones two, three, and four. These written descriptions must include the maximum distances upgradient from the well, the maximum distances downgradient from the well, and the maximum widths of each protection zone.

(b) Optional Two-Mile Radius Delineation Procedure - Delineation Reports for protection areas delineated using the Optional Two-mile Radius Delineation Procedure shall include the following information:

(i) Map Showing Boundaries of the DWSP Management Area - A map showing the location of the ground-water source of drinking water and the DWSP management area boundary. The base map shall be a 1:24,000-scale (7.5-minute series) topographic map, such as is published by the U.S. Geological Survey. Although zone one (100-foot radius around the well or margin of the collection area) need not be on the map, the complete two-mile radius must be drawn and labeled. More detailed maps are optional and may be submitted in addition to the map required above.

(ii) Hydrogeologic Report to Exclude a Potential Contamination Source - To exclude a potential contamination source from the inventory which is required in R309-600-10(1), a hydrogeologic report is required which clearly demonstrates that the potential contamination source has no capacity to contaminate the source.

(7) Protected Aquifer Conditions - If a PWS chooses to verify protected aquifer conditions, it shall submit the following additional data to DDW for each of its ground-water sources for which the protected aquifer conditions apply. The report must state that the aquifer meets the definition of a protected aquifer based on the following information:

(a) thickness, depth, and lithology of the protective clay layer;

(b) data to indicate the lateral continuity of the protective clay layer over the extent of zone two. This may include such data as correlation of beds in multiple wells, published hydrogeologic studies, stratigraphic studies, potentiometric surface studies, and so forth; and

(c) evidence that the well has been grouted or otherwise sealed from the ground surface to a depth of at least 100 feet and for a thickness of at least 30 feet through the protective clay layer in accordance with R309-600-6(1)(x) R309-204-6(6)(i).

R309-600-10. Potential Contamination Source Inventory and Identification and Assessment of Controls.

(1) Prioritized Inventory of Potential Contamination Sources - Each PWS shall list all potential contamination sources within each DWSP zone or management area in priority order and state the basis for this order. This priority ranking shall be according to relative risk to the drinking water source. The name and address of each commercial and industrial potential contamination source is required. Additional information should include the name and phone number of a contact person and a list of the chemical, biological, and/or radiological hazards associated with each potential contamination source. Additionally, each PWS shall identify each potential contamination source as to its location in zone one, two, three, four or in a management area and plot it on the map required in R309-600-9(5)(a)(viii) or R309-600-9(5)(b)(i).

(a) List of Potential Contamination Sources - A List of Potential Contamination Sources is found in the "Source Protection User's Guide for Ground-Water Sources." This document may be obtained from DDW. This list may be used by PWSs as a guide to inventorying potential contamination sources within their DWSP zones and management areas.

(b) Refining, Expanding, Updating, and Verifying Potential Contamination Sources - Each PWS shall update its list of potential contamination sources to show current conditions within DWSP zones or management areas. This includes adding potential contamination sources which have moved into DWSP zones or management areas, deleting potential contamination sources which have moved out, improving available data about potential contamination sources, and all other appropriate refinements.

(2) Identification and Assessment of Current Controls - PWSs are not required to plan and implement land management strategies for potential contamination source hazards that are assessed as "adequately controlled." If controls are not identified, the potential contamination source will be considered to be "not adequately controlled." Additionally, if the hazards at a potential contamination source cannot be identified, the potential contamination source must be assessed as "not adequately controlled." Identification and assessment should be limited to one of the following controls for each applicable hazard: regulatory, best management/pollution prevention, physical, or negligible quantity. Each of the following topics for a control must be addressed before identification and assessment will be considered to be complete. Refer to the "Source Protection User's Guide for Ground-Water Sources" for a list of government agencies and the programs they administer to control potential contamination sources. This guide may be obtained from DDW.

(a) Regulatory Controls - Identify the enforcement agency and verify that the hazard is being regulated by them; cite and/or quote applicable references in the regulation, rule or ordinance which pertain to controlling the hazard; explain how the regulatory control prevents ground-water contamination; assess the hazard; and set a date to reassess the hazard.

(b) Best Management/Pollution Prevention Practice Controls - List the specific best management/pollution prevention practices which have been implemented by potential contamination source management to control the hazard and indicate that they are willing to continue the use of these practices; explain how these practices prevent ground-water contamination; assess the hazard; and set a date to reassess the hazard.

(c) Physical Controls - Describe the physical control(s) which have been constructed to control the hazard; explain how these controls prevent contamination; assess the hazard; and set a date to reassess the hazard.

(d) Negligible Quantity Control - Identify the quantity of the hazard that is being used, disposed, stored, manufactured, and/or transported; explain why this amount should be considered a negligible quantity; assess the hazard; and set a date to reassess the hazard.

(3) For the purpose of meeting the requirements of R309-600, the Executive Secretary will consider a PWS's assessment that a potential contamination source which is covered by a permit or approval under one of the regulatory programs listed below sufficient to demonstrate that the source is adequately controlled unless otherwise determined by the Executive Secretary. For all other state programs, the PWS's assessment is subject to review by the Executive Secretary; as a result, a PWS's DWSP Plan may be disapproved if the Executive

Secretary does not concur with its assessment(s).

(a) The Utah Ground-Water Quality Protection program established by Section 19-5-104 and R317-6;

(b) closure plans or Part B permits under authority of the Resource Conservation and Recovery Act (RCRA) of 1984 regarding the monitoring and treatment of ground water;

(c) the Utah Pollutant Discharge Elimination System (UPDES) established by Section 19-5-104 and R317-8;

(d) the Underground Storage Tank Program established by Section 19-6-403 and R311-200 through R311-208; and

(e) the Underground Injection Control (UIC) Program for classes I-IV established by Sections 19-5-104 and 40-6-5 and R317-7 and R649-5.

R309-600-11. Management Program to Control Each Preexisting Potential Contamination Source.

(1) PWSs shall plan land management strategies to control each preexisting potential contamination source in accordance with their authority and jurisdiction. Land management strategies must be consistent with the provisions of R309-600, designed to control potential contamination, and may be regulatory or non-regulatory. Each potential contamination source listed on the inventory required in R309-600-10(1) and assessed as "not adequately controlled" must be addressed. Land management strategies must be implemented according to the schedule required in R309-600-7(1)(e).

(2) PWSs with overlapping protection zones and management areas may cooperate in controlling a particular preexisting potential contamination source if one PWS will agree to take the lead in planning and implementing land management strategies and the remaining PWS(s) will assess the preexisting potential contamination source as "adequately controlled."

R309-600-12. Management Program to Control or Prohibit Future Potential Contamination Sources for Existing Drinking Water Sources.

(1) PWSs shall plan land management strategies to control or prohibit future potential contamination sources within each of its DWSP zones or management areas consistent with the provisions of R309-600 and to an extent allowed under its authority and jurisdiction. Land management strategies must be designed to control potential contamination and may be regulatory or non-regulatory. Additionally land management strategies must be implemented according to the schedule required in R309-600-7(1)(e).

(2) Protection areas may extend into neighboring cities, towns, and counties. Since it may not be possible for some PWSs to enact regulatory land management strategies outside of their jurisdiction, except as described below, it is recommended that these PWSs contact their neighboring cities, towns, and counties to see if they are willing to implement protective ordinances to prevent ground-water contamination under joint management agreements.

(3) Cities and towns have extraterritorial jurisdiction in accordance with Section 10-8-15 of the Utah Code Annotated to enact ordinances to protect a stream or "source" from which their water is taken... "for 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream..." Section 10-8-15 includes ground-water sources.

(4) Zoning ordinances are an effective means to control potential contamination sources that may want to move into protection areas. They allow PWSs to prohibit facilities that would discharge contaminants directly to ground water. They also allow PWSs to review plans from potential contamination sources to ensure there will be adequate spill protection and waste disposal procedures, etc. If zoning ordinances are not used, PWSs must establish a plan to contact potential contamination sources individually as they move into protection areas, identify and assess their controls, and plan land management strategies if they are not adequately controlled.

R309-600-13. New Ground-water Sources of Drinking Water.

(1) Prior to constructing a new ground-water source of drinking water, each PWS shall develop a PER which demonstrates whether the source meets the requirements of this section and submit it to DDW. Additionally, engineering information in accordance with R309-204-6(5)(a) or R309-204-7(4) must be submitted to DDW. The Executive Secretary will not grant plan approval until both source protection and engineering requirements are met. Construction standards relating to protection zones and management areas (fencing, diversion channels, sewer line construction, and grouting, etc.) are found in R309-204. After the source is constructed a DWSP Plan must be developed, submitted, and implemented accordingly.

(2) Preliminary Evaluation Report for New Sources of Drinking Water - PERs shall cover all four zones or the entire management area. PERs should be developed in accordance with the "Standard Report Format for New Wells and Springs." This document may be obtained from DDW. PWSs shall include the following four sections in each PER:

(a) Delineation Report for Estimated DWSP Zones - The same requirements apply as in R309-600-9(5), except that the hydrogeologic data for the PER must be developed using the best available data which may be obtained from: surrounding wells, published information, or surface geologic mapping. PWSs must use the Preferred Delineation Procedure to delineate protection zones for new wells. The Delineation Report for Estimated DWSP Zones shall be stamped and signed by a professional geologist or professional engineer unless the Optional Two-Mile Radius Delineation Procedure is used for a new spring.

(b) Inventory of Potential Contamination Sources and Identification and Assessment of Controls - The same requirements apply as in R309-600-10(1) and (2). Additionally, the PER must demonstrate that the source meets the following requirements:

(i) Protection Areas Delineated using the Preferred Delineation Procedure in Protected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or a pollution source exists within zone one.

(ii) Protection Areas Delineated using the Preferred Delineation Procedure in Unprotected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or an uncontrolled pollution source exists within zone one. Additionally, a new ground-water source of drinking water may not be located where a pollution source exists within zone two unless the pollution source implements design standards which prevent contaminated discharges to ground water.

(iii) Management Areas Delineated using the Optional Two-Mile Radius Delineation Procedure - A PWS shall not locate a new spring where an uncontrolled potential contamination source or a pollution source exists within zone one. Additionally, a new spring may not be located where a pollution source exist within the management area unless: a hydrogeologic report in accordance with R309-600-9(5)(b)(ii) which verifies that it does not impact the spring; or the pollution source implements design standards which prevent contaminated discharges to ground water.

(c) Land Ownership Map - A land ownership map which includes all land within zones one and two or the entire management area. Additionally, include a list which exclusively identifies the land owners in zones one and two or the management area, the parcel(s) of land which they own, and the

zone in which they own land. A land ownership map and list are not required if ordinances are used to protect these areas.

(d) Land Use Agreements, Letters of Intent, or Zoning Ordinances - Land use agreements which meet the requirements of the definition in R309-600-6(1)(p). Zoning ordinances which are already in effect or letters of intent may be substituted for land use agreements; however, they must accomplish the same level of protection that is required in a land use agreement. Letters of intent must be notarized, include the same language that is required in land use agreements, and contain the statement that "the owner agrees to record the land use agreement in the county recorder's office, if the source proves to be an acceptable drinking water source." The PWS shall not introduce a new source into its system until copies of all applicable recorded land use agreements are submitted to DDW.

(3) Sewers Within DWSP Zones and Management Areas - Sewer lines may not be located within zones one and two or a management area unless the criteria identified below are met. If sewer lines are located or planned to be located within zones one and two or a management area, the PER must demonstrate that they comply with this criteria. Sewer lines that comply with these criteria may be assessed as adequately controlled potential contamination sources.

(a) Zone One - If the conditions specified in R309-600-13(3)(a)(i and ii) below are met, all sewer lines within zone one shall be constructed in accordance with R309-204-6(4) and must be at least 10 feet from the wellhead.

(i) There is at least 5 feet of suitable soil between the bottom of the sewer lines and the top of the maximum seasonal ground-water table or perched water table. (Suitable soils contain adequate sand/silt/clay to act as an effective effluent filter within its depth for the removal of pathogenic organisms and fill the voids between coarse particles such as gravel, cobbles, and angular rock fragments); and

(ii) there is at least 5 feet of suitable soil between the bottom of the sewer line and the top of any bedrock formations or other unsuitable soils. Bedrock formations include formations that have such a low permeability that they prevent the downward passage of effluent. Bedrock formations that have open joints or solution channels, which permit such rapid flow that effluent is not renovated, are also considered unacceptable. Other unsuitable soils include those with coarse particles such as gravel, cobbles, or angular rock fragments with insufficient soil to fill the voids between the particles. Solid or fractured bedrock such as shale, sandstone, limestone, basalt, or granite are unacceptable.

(b) Zones One and Two - If the conditions identified in R309-600-13(3)(a)(i and ii) above cannot be met, any sewer lines within zones one and two or a management area shall be constructed in accordance with R309-204-6(4) and must be at least 300 feet from the wellhead or margin of the collection area.

(4) Use waivers for the VOC and pesticide parameter groups may be issued if the inventory of potential contamination sources indicates that the chemicals within these parameter groups are not used, disposed, stored, transported, or manufactured within zones one, two, and three or the management area.

(5) Replacement Wells - A PER is not required for proposed wells, if the PWS receives written notification from the Executive Secretary that the well is classified as a replacement well. The PWS must submit a letter requesting that the well be classified as a replacement well and include documentation to show that the conditions required in R309-600-6(1)(y) are met. If a proposed well is classified as a replacement well, the PWS is still required to submit and obtain written approval for all other information as required in:

(a) DWSP Plan for New Sources of Drinking Water (refer to R309-600-13(6), and

(b) the Outline of Well Approval Process (refer to R309-204-6(5)).

(6) DWSP Plan for New Sources of Drinking Water - The PWS shall submit a DWSP Plan in accordance with R309-600-7(1) for any new ground-water source of drinking water within one year after the date of the Executive Secretary's concurrence letter for the PER. In developing this DWSP Plan, PWSs shall refine the information in the PER by applying any new, as-constructed characteristics of the source (i.e., pumping rate, aquifer test, etc.).

R309-600-14. Contingency Plans.

PWSs shall submit a Contingency Plan which includes all sources of drinking water for their entire water system to DDW concurrently with the submission of their first DWSP Plan. Guidance for developing Contingency Plans may be found in the "Source Protection User's Guide for Ground-Water Sources." This document may be obtained from DDW.

R309-600-15. Public Notification.

A PWSs consumers must be notified that its DWSP plans are available for their review. This notification must be released to the public by December 31, 2003. Public notifications shall address all of the PWS's sources and include the following:

(a) A discussion of the general types of potential contamination sources within the protection zones;

(b) an analysis that rates the system's susceptibility to contamination as low, medium, or high; and

(c) a statement that the system's complete DWSP plans are available to the public upon request.

Examples of means of notifying the public and examples of public notification material are discussed in the "Source Protection User's Guide for Ground-Water Sources" which may be obtained from DDW.

R309-600-16. Monitoring Reduction Waivers.

(1) Three types of monitoring waivers are available to PWSs. They are: a) reliably and consistently, b) use, and c) susceptibility. The criteria for establishing a reliably and consistently waiver is set forth in R309-104. The criteria for use and susceptibility waivers follow.

(2) If a source's DWSP plan is due according to the schedule in R309-600-3, and is not submitted to DDW, its use and susceptibility waivers for the VOC and pesticide parameter groups (refer to R309-104-4.3.1 e and f; and R309-104-4.3.2 h and i) will expire unless an exception (refer to R309-600-4) for a new due date has been granted. Additionally, current use and susceptibility waivers for the VOC, pesticide and unregulated parameter groups will expire upon review of a DWSP plan, if these waivers are not addressed in the plan. Monitoring reduction waivers must be renewed every six years at the time the PWSs Updated DWSP Plans are due and be addressed therein.

(3) Use Waivers - If the chemicals within the VOC and/or pesticide parameter group(s) (refer to R309-103 table 103-3 and 103-2) have not been used, disposed, stored, transported, or manufactured within the past five years within zones one, two, and three, the source may be eligible for a use waiver. To qualify for a VOC and/or pesticide use waiver, a PWS must complete the following two steps:

(a) List the chemicals which are used, disposed, stored, transported, and manufactured at each potential contamination source within zones one, two, and three where the use of the chemicals within the VOC and pesticide parameter groups are likely; and

(b) submit a dated statement which is signed by the system's designated person that none of the VOCs and pesticides within these respective parameter groups have been used, disposed, stored, transported, or manufactured within the past five years within zones one, two, and three.

(4) Susceptibility Waivers - If a source does not qualify for use waivers, and if reliably and consistently waivers have not been issued, it may be eligible for susceptibility waivers. Susceptibility waivers tolerate the use, disposal, storage, transport, and manufacture of chemicals within zones one, two, and three as long as the PWS can demonstrate that the source is not susceptible to contamination from them. To qualify for a VOC and/or pesticide susceptibility waiver, a PWS must complete the following steps:

(a) Submit the monitoring results of at least one applicable sample from the VOC and/or pesticide parameter group(s) that has been taken within the past six years. A non-detectable analysis for each chemical within the parameter group(s) is required;

(b) submit a dated statement from the designated person verifying that the PWS is confident that a susceptibility waiver for the VOC and/or pesticide parameter group(s) will not threaten public health; and

(c) verify that the source is developed in a protected aquifer, as defined in R309-600-6(1)(x), and have a public education program which addresses proper use and disposal practices for pesticides and VOCs which is described in the management sections of the DWSP plan.

(5) Special Waiver Conditions - Special scientific or engineering studies or best management practices may be developed to support a request for an exception to paragraph R309-600-16(4)(c) due to special conditions. These studies must be approved by the Executive Secretary before the PWS begins the study. Special waiver condition studies may include:

(a) geology and construction/grout seal of the well to demonstrate geologic protection;

(b) memoranda of agreement which addresses best management practices for VOCs and/or pesticides with industrial, agricultural, and commercial facilities which use, store, transport, manufacture, or dispose of the chemicals within these parameter groups;

(c) public education programs which address best management practices for VOCs and/or pesticides;

(d) contaminant quantities;

(e) affected land area; and/or

(f) fate and transport studies of the VOCs and/or pesticides which are listed as hazards at the PCSs within zones one, two, and three, and any other conditions which may be identified by the PWS and approved by the Executive Secretary.

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R309. Environmental Quality, Drinking Water.
R309-605. Source Protection: Drinking Water Source Protection for Surface Water Sources.
R309-605-1. Purpose.

Public Water Systems (PWSs) are responsible for protecting their sources of drinking water from contamination. R309-605 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their surface water sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide additional measures are necessary.

R309-605 applies to PWSs which obtain surface water prior to treatment and distribution and to PWSs obtaining water from ground-water sources which are under the direct influence of surface water. However, compliance with this rule is voluntary for public (transient) non-community water systems to the extent that they are using existing surface water sources of drinking water.

R309-605-2. Authority.

Under authority of Subsection 19-4-104(1)(a)(iv), the Drinking Water Board adopts this rule which governs the protection of surface sources of drinking water.

R309-605-3. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) "Controls" means the codes, ordinances, rules, and regulations that regulate a potential contamination source. "Controls" also means physical controls which may prevent contaminants from migrating off of a site and into surface or ground water. Controls also means negligible quantities of contaminants.

(b) "Division" means Division of Drinking Water.

(c) "DWSP Program" means the program and associated plans to protect drinking water sources from contaminants.

(d) "DWSP Zone" means the surface and subsurface area surrounding a surface source of drinking water supplying a PWS, over which or through which contaminants are reasonably likely to move toward and reach the source.

(e) "Designated person" means the person appointed by a PWS to ensure that the requirements of R309-605 are met.

(f) "Executive Secretary" means the individual appointed pursuant to Section 19-4-106 of the Utah Safe Drinking Water Act.

(g) "Existing surface water source of drinking water" means a public supply surface water source for which plans and specifications were submitted to DDW on or before June 12, 2000.

(h) "Intake", for the purposes of surface water drinking water source protection, means the device used to divert surface water and also the conveyance to the point immediately preceding treatment, or, if no treatment is provided, at the entry point to the distribution system.

(i) "Land management strategies" means zoning and non-zoning controls which include, but are not limited to, the following: zoning and subdivision ordinances, site plan reviews, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, ground-water monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, and written contracts and agreements.

(j) "New surface water source of drinking water" means a public supply surface water source of drinking water for which plans and specifications are submitted to the Executive Secretary after June 12, 2000.

(k) "Nonpoint source" means any area or conveyance not meeting the definition of point source.

(l) "Point of diversion" (POD) is the location at which water from a surface source enters a piped conveyance, storage tank, or is otherwise removed from open exposure prior to treatment.

(m) "Point source" means any discernible, confined, and discrete location or conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation with more than ten animal units, landfill, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(n) "Pollution source" means point source discharges of contaminants to surface water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in the Emergency Planning and Community Right-to-Know Act (EPCRA),42 U.S.C. 11001 et seq. (1986). Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, land filling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than ten animal units. The following definitions are part of R309-605 and clarify the meaning of "pollution source:"

(i) "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

(ii) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(iii) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of the "TITLE III LIST OF LISTS - Consolidated List of Chemicals Subject to Reporting Under SARA Title III," (EPA 550-B-96-015). A copy of this document may be obtained from: NCEPI, PO Box 42419, Cincinnati, OH 45202. Online ordering is also available at: http://www.epa.gov/ncepihom/orderpub.html.

(o) "Potential contamination source" means any facility or site which employs an activity or procedure or stores materials which may potentially contaminate ground-water or surface water. A pollution source is also a potential contamination source.

(p) "PWS" means a public water system affected by this rule, as described in R309-605-1.

(q) "Surface water" means all water which is open to the atmosphere and subject to surface runoff (see also R309-204-5(1)).

(r) "Susceptibility" means the potential for a PWS to draw water contaminated above a demonstrated background water quality concentration through any combination of the following pathways: geologic strata and overlying soil, direct discharge, overland flow, upgradient water, cracks/fissures in or open areas of the surface water intake and/or the pipe/conveyance between the intake and the water distribution system. Susceptibility is determined at the point immediately preceding treatment or, if

no treatment is provided, at the entry point to the system.

(s) "Watershed" means the topographic boundary, up to the state's border, that is the perimeter of the catchment basin that provides water to the intake structure.

R309-605-4. Implementation.

(1) Existing Surface Water Sources - Each PWS shall submit a Drinking Water Source Protection (DWSP) Plan to the Division of Drinking Water (Division) in accordance with R309-605-7 for each of its existing surface water sources according to the following schedule.

TABLE

Schedule for DWSP Plan Submittal

Population served by PWS	DWSP Plans due by
Greater than 10,000	December 31, 2001
3,300 to 10,000	May 6, 2002
Fewer than 3,300	May 6, 2003

(2) New surface water sources - Each PWS shall submit a Preliminary Evaluation Report (PER) in accordance with R309-605-9 for each of its new surface water sources to the Executive Secretary.

R309-605-5. Exceptions.

(1) Exceptions to the requirements of R309-605 or parts thereof may be granted by the Executive Secretary to a PWS if, due to compelling factors (which may include economic factors), a PWS is unable to comply with these requirements, and the granting of an exception will not result in an unreasonable risk to health.

(2) The Executive Secretary may prescribe a schedule by which the PWS must come into compliance with the requirements of R309-605.

R309-605-6. Designated Person.

(1) Each PWS shall designate a person responsible for demonstrating the PWS's compliance with these rules. A designated person shall be appointed and reported in writing to the Executive Secretary by each PWS within 180 days of the effective date of R309-605. The name, address and telephone number of the designated person shall be included in each DWSP Plan and PER that is submitted to the Executive Secretary, and in all other correspondence with the Division.

(2) Each PWS shall notify the Executive Secretary in writing within 30 days of any changes in the appointment of a designated person.

R309-605-7. Drinking Water Source Protection (DWSP) for Surface Sources.

(1) DWSP Plans

(a) Each PWS shall develop, submit, and implement a DWSP Plan for each of its surface water sources of drinking water.

(i) Recognizing that more than one PWS may jointly use a source from the same or nearby diversions, the Executive Secretary encourages collaboration among such PWSs with joint use of a source in the development of a DWSP plan for that source. PWSs who jointly submit an acceptable DWSP plan per R309-605-7 for one surface water source above common point(s) of diversion, will be considered to have met the requirement of R309-605-7(1)(a). The deadline from R309-605-4(1) that would apply to such a collaboration would be associated with the largest population served by the individual parties to the agreement.

(b) Required Sections for DWSP Plans - DWSP Plans should be developed in accordance with the "Standard Report Format for Surface Sources". This document may be obtained from the Division. DWSP Plans must include the following eight sections:

(i) DWSP Delineation Report - A DWSP Delineation Report in accordance with R309-605-7(3) is the first section of a DWSP Plan.

(ii) Susceptibility Analysis and Determination - A susceptibility analysis and determination in accordance with R309-605-7(4) is the second section of a DWSP report.

(iii) Management Program to Control Each Preexisting Potential Contamination Source - Land management strategies to control each not adequately controlled preexisting potential contamination source in accordance with R309-605-7(5) is the third section of a DWSP Plan.

(iv) Management Program to Control or Prohibit Future Potential Contamination Sources - Land management strategies for controlling or prohibiting future potential contamination sources is the fourth section of a DWSP Plan. This must be in accordance with R309-605-7(6), must be consistent with the general provisions of this rule, and implemented to an extent allowed under the PWS's authority and jurisdiction.

(v) Implementation Schedule - The implementation schedule is the fifth section of a DWSP Plan. Each PWS shall develop a step-by-step implementation schedule which lists each of its proposed land management strategies with an implementation date for each strategy.

(vi) Resource Evaluation - The resource evaluation is the sixth section of a DWSP Plan. Each PWS shall assess the financial and other resources which may be required for it to implement each of its DWSP Plans and determine how these resources may be acquired.

(vii) Recordkeeping - Recordkeeping is the seventh section of a DWSP Plan. Each PWS shall document changes in each of its DWSP Plans as they are updated to show significant changes in conditions in the protection zones. As a DWSP Plan is executed, the PWS shall document any land management strategies that are implemented. These documents may include any of the following: ordinances, codes, permits, memoranda of understanding, public education programs, and so forth.

(viii) Public Notification - A method for, schedule for and example of the means for notifying the public water system's customers and consumers regarding the drinking water source water assessment and the results of that assessment is the last section of a DWSP plan. This must be in accordance with R309-605-7(7).

(ix) Existing watershed or resource management plans - In lieu of some or all of the report sections described in R309-605-7(1)(b), the PWS may submit watershed or resource management plans that in whole or in part meet the requirements of this rule. Such plans shall be submitted to the Executive Secretary with a cover letter that fully explains how they meet the requirements of the current DWSP rules. Any required section described in R309-605-7(1)(b) that is not covered by the watershed or resource management plan must be addressed and submitted jointly. The watershed or resource management plans will be subject to the same review and approval process as any other section of the DWSP plan.

(c) DWSP Plan Administration - DWSP Plans shall be submitted, corrected, retained, implemented, updated, and revised according to the following:

(i) Submitting DWSP Plans - Each PWS shall submit a DWSP Plan to the Executive Secretary in accordance with the schedule in R309-605-4(2) for each of its surface water sources of drinking water (a joint development and submittal of a DWSP plan is acceptable for PWSs with the joint use of a source, per R309-605-7(1)(a)(i).)

(ii) Correcting Deficiencies - Each PWS shall correct any deficiencies in a disapproved DWSP Plan and resubmit it to the Executive Secretary within 90 days of the disapproval date.

(iii) Retaining DWSP Plans - Each PWS shall retain on its

premises a current copy of each of its DWSP Plans. DWSP Plans shall be made available to the public upon request.

(iv) Implementing DWSP Plans - Each PWS shall begin implementing each of its DWSP Plans in accordance with its schedule in R309-605-7(1)(b)(v), within 180 days after submittal if they are not disapproved by the Executive Secretary.

(v) Updating and Resubmitting DWSP Plans - Each PWS shall review and update its DWSP Plans as often as necessary to ensure that they show current conditions in the DWSP zones, but at least annually after the original due date (see R309-605-4(1)). Updated plans also document the implementation of land management strategies in the recordkeeping section. Updated DWSP Plans will be resubmitted to the Executive Secretary every six years from their original due date, which is described in R309-605-4.

(vi) Revising DWSP Plans - Each PWS shall submit a revised DWSP Plan to the Executive Secretary within 180 days after the reconstruction or redevelopment of any surface water source of drinking water which causes changes in source construction, source development, hydrogeology, delineation, potential contamination sources, or proposed land management strategies.

(2) DWSP Plan Review.

(a) The Executive Secretary shall review each DWSP Plan submitted by PWSs and "concur," "conditionally concur" or "disapprove" the plan.

(b) The Executive Secretary may "disapprove" DWSP Plans for good cause, including any of the following reasons:

(i) A DWSP Plan that is missing the delineation report or any of the information and data required in it (refer to R309-605-7(3));

(ii) An inaccurate Susceptibility Analysis or a DWSP Plan that is missing this report or any of the information required in it (refer to R309-605-7(4));

(iii) An inaccurate Prioritized Inventory of Potential Contamination Sources or a DWSP Plan that is missing this report or any of the information required in it (refer to R309-605-7(4)(c));

(iv) An inaccurate assessment of current controls (refer to R309-605-7(4)(a)(iii)(B));

(v) A missing or incomplete Management Program to Control Each Preexisting Potential Contamination Source which has been assessed as "not adequately controlled" by the PWS (refer to R309-605-7(5));

(vi) A missing or incomplete Management Program to Control or Prohibit Future Potential Contamination Sources (refer to R309-605-7(6));

(vii) A missing Implementation Schedule, Resource Evaluation, Recordkeeping Section, or Contingency Plan (refer to R309-605-7(1)(b)(v-vii) and R309-605-9);

(viii) A missing or incomplete Public Notification Section (refer to R309-605-7(7).

(c) If the Executive Secretary conditionally concurs with a DWSP Plan, the PWS must implement the conditions and report compliance the next time the DWSP Plan is due and submitted to the Executive Secretary.

(3) Delineation of Protection Zones

(a) The delineation section of the DWSP plan for surface water sources may be obtained from the Division upon request. A delineation section prepared and provided by the Division would become the first section of the submittal from the PWS. The delineation section provided by the Division will consist of a map or maps showing the limits of the zones described in R309-605-7(3)(b)(i-iv), and will include an inventory of potential contamination sources on record in the Division's Geographic Information System.

(b) Alternatively, the PWS may provide their own delineation report. Such a submittal must either describe the zones as defined in R309-605-7(3)(b)(i-iv), or must comply with the requirements and definitions of R309-605-7(3)(c). The delineation report must include a map or maps showing the extent of the zones.

(i) Zone 1:

(A) Streams, rivers and canals: zone 1 encompasses the area on both sides of the source, 1/2 mile on each side measured laterally from the high water mark of the source (bank full), and from 100 feet downstream of the POD to 15 miles upstream, or to the limits of the watershed or to the state line, whichever comes first. If a natural stream or river is diverted into an uncovered canal or aqueduct for the purpose of delivering water to a system or a water treatment facility, that entire canal will be considered to be part of zone 1, and the 15 mile measurement upstream will apply to the stream or river contributing water to the system from the diversion.

(B) Reservoirs or lakes: zone 1 is considered to be the area 1/2 mile from the high water mark of the source. Any stream or river contributing to the lake/reservoir will be included in zone 1 for a distance of 15 miles upstream, and 1/2 mile laterally on both sides of the source. If a reservoir is diverted into an uncovered canal or aqueduct for the purpose of delivering water to a system or a water treatment facility, that entire canal will be considered to be part of zone 1, and the 15 mile measurement upstream will apply to the reservoir and tributaries contributing water to the system.

(ii) Zone 2: Zone 2 is defined as the area from the end of zone 1, and an additional 50 miles upstream (or to the limits of the watershed or to the state line, whichever comes first), and 1000 feet on each side measured from the high water mark of the source.

(iii) Zone 3: Zone 3 is defined as the area from the end of zone 2 to the limits of the watershed or to the state line, whichever comes first, and 500 feet on each side measured from the high water mark of the source.

(iv) Zone 4: Zone 4 is defined as the remainder of the area of the watershed (up to the state line, if applicable) contributing to the source that does not fall within the boundaries of zones 1 through 3.

(v) Special case delineations:

(A) Basin Transfer PODs: Where water supplies are received from basin transfers, the water from the extraneous basin will be treated as a separate source, and will be subject to its own DWSP plan, starting from zone 1 at the secondary POD.

(c) If the PWS is able to demonstrate that a different zone configuration is more protective than those defined in R309-605-7(3)(b), that different configuration may be used upon prior review and approval by the Executive Secretary. An explanation of the method used to obtain and establish the dimensions of the zones must be provided. The delineation report must include a map or maps showing the extent of the zones. The entire watershed boundary contributing to a source must be included in the delineation.

(4) Susceptibility Analysis and Determination:

(a) Susceptibility Analysis:

(i) Structural integrity of the intake: The PWS will evaluate the structural integrity of the intake to ensure compliance with the existing source development rule (R309-204-5) on a pass or fail basis. The pass-fail rating will be determined by whether the intake meets minimum rule requirements, and whether the physical condition of the intake is adequate to protect the intake from contamination events. The integrity evaluation includes any portion of the conveyance from the point of diversion to the distribution systems that is open to the atmosphere or is otherwise vulnerable to contamination, including distribution canals, etc.

(ii) Sensitivity of Natural Setting: The PWS will evaluate the sensitivity of the source based on physiographic and/or hydrogeologic factors. Factors influencing sensitivity may include any natural or man-made feature that increases or

decreases the likelihood of contamination. Sensitivity does not address the question of whether contamination is present in the watershed or recharge area.

(iii) Assessment of management of potential contamination sources:

(A) Potential Contamination Source Inventory

(I) Each PWS shall identify and list all potential contamination sources within DWSP zones 1, 2 and 3, as applicable for individual sources. The name and address of each non-residential potential contamination source is required, as well as a list of the chemical, biological, and/or radiological hazards associated with each potential contamination source. Additionally, each PWS shall identify each potential contamination source as to its location in zone one, two, or three and plot it on the map required in R309-605-7(3)(a and b). The PWS may rely on the inventory provided by the Division for zone 4.

(II) List of Potential Contamination Sources - A List of Potential Contamination Sources may be obtained from the Division. This list may be used by PWSs as an introduction to inventorying potential contamination sources within their DWSP zones. The list is not intended to be all-inclusive.

(III) Refining, Expanding, Updating, and Verifying Potential Contamination Sources - Each PWS shall update its list of potential contamination sources to show current conditions within DWSP zones according to R309-605-7(1)(c)(v). This includes adding potential contamination sources which have moved into DWSP zones, deleting potential contamination sources which have moved out, improving available data about potential contamination sources, and all other appropriate refinements.

(B) Identification and Assessment of Controls: The PWS will identify and assess the hazards at each potential contamination source, including those in the inventory provided by the Division that are located in zone 4, as "adequately controlled" or "not adequately controlled".

(I) If controls are not identified, the potential contamination source will be considered "not adequately controlled." Additionally, if the hazards at a potential contamination source cannot be or are not identified, the potential contamination source must be assessed as "not adequately controlled."

(II) Types of controls: For each hazard deemed to be controlled, one of the following controls shall be identified: regulatory, best management/pollution prevention, or physical controls. Negligible quantities of contaminants are also considered a control. The assessment of controls will not be considered complete unless the controls are completely evaluated and discussed in the DWSP report, using the following criteria:

Regulatory Controls - Identify the enforcement agency and verify that the hazard is being regulated by them; cite and/or quote applicable references in the regulation, rule or ordinance which pertain to controlling the hazard; explain how the regulatory controls affect the potential for surface water contamination; assess the hazard; and set a date to reassess the hazard. For assistance in identifying regulatory controls, refer to the "Source Protection User's Guide" Appendix D for a list of government agencies and the programs they administer to control potential contamination sources. This guide may be obtained from the Division.

Best Management/Pollution Prevention Practice Controls - List the specific best management/pollution prevention practices which have been implemented by potential contamination source management to control the hazard and indicate that they are willing to continue the use of these practices; explain how these practices affect the potential for surface water contamination; assess the hazard; and set a date to reassess the hazard.

Physical Controls - Describe the physical control(s) which have been constructed to control the hazard; explain how these controls affect the potential for contamination; assess the hazard; and set a date to reassess the hazard.

Negligible Quantity Control - Identify the quantity of the hazard that is being used, disposed, stored, manufactured, and/or transported; explain why this amount is a negligible quantity; assess the hazard; and set a date to reassess the hazard.

(III) PWSs may assess controls on Potential Contamination Sources collectively, when the Potential Contamination Sources have similar characteristics, or when the Potential Contamination Sources are clustered geographically. Examples may include, but are not limited to, abandoned mines that are part of the same mining districts, underground storage tanks that are in the same zone, or leaking underground storage tanks in the same city. However, care should be taken to avoid collectively assessing Potential Contamination Sources to the extent that the assessments become meaningless. The Executive Secretary may require an individual assessment for a Potential Contamination Source if the Executive Secretary determines that the collective assessment does not adequately assess controls.

(C) A potential contamination source which is covered by a permit or approval under one of the regulatory programs listed below shall be considered to be adequately controlled unless otherwise determined by the Executive Secretary. The PWS must provide documentation establishing that the Potential Contamination Source is covered by the regulatory program. For all other state regulatory programs, the PWS's assessment is subject to review by the Executive Secretary; as a result, a PWS's DWSP Plan may be disapproved if the Executive Secretary does not concur with its assessment(s).

(I) The Utah Ground-Water Quality Protection program established by Section 19-5-104 and Rule R317-6;

(II) Closure plans or Part B permits under authority of the Resource Conservation and Recovery Act (RCRA) of 1984 regarding the monitoring and treatment of ground-water;

(III) The Utah Pollutant Discharge Elimination System (UPDES) established by Section 19-5-104 and Rule R317-8; at the discretion of the PWS, this may include Confined Animal feeding Operations/Animal Feeding Operations (CAFO/AFO) assessed under the Utah DWQ CAFO/AFO Strategy.

(IV) The Underground Storage Tank Program established by Section 19-6-403 and Rules R311-200 through R311-208; and

(V) the Underground Injection Control (UIC) Program for classes I-IV established by Sections 19-5-104 and 40-6-5 and Rules R317-7 and R649-5.

(b) Susceptibility determination:

(i) The PWS will assess the drinking water source for its susceptibility relative to each potential contamination source. The determination will be based on the following four factors: 1) the structural integrity of the intake, 2) the sensitivity of the natural setting, 3) whether a Potential Contamination Source is considered controlled or not, and 4) how the first three factors are interrelated. The PWS will provide an explanation of the method or judgement used to weigh the first three factors against each other to determine susceptibility.

(ii) Additionally, each drinking water source will be assessed by the PWS for its overall susceptibility to potential contamination events. This will result in a qualitative assessment of the susceptibility of the drinking water source to contamination. This assessment of overall susceptibility allows the PWS and others to compare the susceptibility of one drinking water source to another.

(iii) Each surface water drinking water source in the state of Utah is initially considered to have a high susceptibility to contamination, due to the intrinsic unprotected nature of surface water sources. An assumption of high susceptibility will be

used by the Executive Secretary unless a PWS or a group of PWSs demonstrates otherwise, per R309-605, and receives concurrence from the Executive Secretary under R309-605-7(2).

(c) Prioritized Potential Contamination Source Inventory: The PWS will prepare a prioritized inventory of potential contamination sources based on the susceptibility determinations in R309-605-7(4)(b)(i). The inventory will rank potential contamination sources based on the degree of threat posed to the drinking water source as determined in R309-605-7(4)(b)(i).

(5) Management Program to Control Each Preexisting Potential Contamination Source.

(a) PWSs are not required to plan and implement land management strategies for potential contamination source hazards that are assessed as "adequately controlled."

(b) With the first submittal of the DWSP Plan, PWSs shall include management strategies to reduce the risk of contamination from, at a minimum, each of the three highest priority uncontrolled Potential Contamination Sources in the protection zones for the source. The Executive Secretary may require land management strategies for additional Potential Contamination Sources to assure adequate protection of the source. A management plan may be for one specific Potential Contamination Source (i.e., a sewage lagoon discharging into a stream), or for a group of similar or related Potential Contamination Sources that were assessed jointly under R309-605-7(4)(a)(iii)(B)(III) (i.e., one management plan for septic systems within one residential development would be acceptable, and would count as one of the three Potential Contamination Source management strategies).

PWSs shall plan land management strategies to control preexisting uncontrolled potential contamination sources in accordance with their existing authority and jurisdiction. Land management strategies must be consistent with the provisions of R309-605, designed to control or reduce the risk of potential contamination, and may be regulatory or non-regulatory. Land management strategies must be implemented according to the schedule required in R309-605-7(1)(b)(v).

(c) PWSs with overlapping protection zones may cooperate in controlling a particular preexisting potential contamination source if one PWS will agree to take the lead in planning and implementing land management strategies. The remaining PWS(s) will assess the preexisting potential contamination source as "adequately controlled."

(d) At each six year cycle for revising and resubmitting the DWSP Plan, under the schedule in R309-605-7(1)(c)(v), the PWS shall prioritize their inventory again, and shall propose a management program to control preexisting Potential Contamination Sources for the three highest priority Potential Contamination Sources, which may include uncontrolled Potential Contamination Sources not previously managed. The PWS shall also continue existing management programs, unless justification is provided that demonstrates that a Potential Contamination Source that was previously managed is now considered controlled.

(6) Management Program to Control or Prohibit Future Potential Contamination Sources for Existing Drinking Water Sources.

(a) PWSs shall plan land management strategies to control or prohibit future potential contamination sources within each of its DWSP zones consistent with the provisions of R309-605 and to the extent allowed under its authority and jurisdiction. Land management strategies must be designed to control or reduce the risk of potential contamination and may be regulatory or non-regulatory. Additionally land management strategies must be implemented according to the schedule required in R309-605-7(1)(b)(v).

(b) Protection areas may extend into neighboring cities, towns, and counties. Since it may not be possible for some PWSs to enact regulatory land management strategies outside of their jurisdiction, except for municipalities as described below, it is recommended that these PWSs contact their neighboring cities, towns, and counties to see if they are willing to implement protective ordinances to prevent surface water contamination under joint management agreements.

(c) Cities and towns have extraterritorial jurisdiction in accordance with Section 10-8-15 of the Utah Code Annotated to enact ordinances to protect a stream or "source" from which their water is taken... " for 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream...."

(d) Zoning ordinances are an effective means to control potential contamination sources that may want to move into protection areas. They allow PWSs to prohibit facilities that would discharge contaminants directly to surface water. They also allow PWSs to review plans from potential contamination sources to ensure there will be adequate spill protection and waste disposal procedures, etc. If zoning ordinances are not used, PWSs must establish a plan to contact potential contamination sources individually as they move into protection areas, identify and assess their controls, and plan land management strategies if they are not adequately controlled.

(7) Public Notification:

Within their DWSP report, each PWS shall specify the method and schedule for notifying their customers and consumers that an assessment of their surface water source has been completed and what the results of that assessment are. Each PWS shall provide the proposed public notification material as an appendix to the DWSP report. The public notification material shall include a discussion of the general geologic and physical setting of the source, the sensitivity of the setting, general types of potential contamination sources in the area, how susceptible the drinking water source is to potential contamination and a map showing the location of the drinking water source and generalized areas of potential concern (it is not mandatory to show the location of the intake itself). The public notification material will be in plain English. The purpose of this public notification is to advise the public regarding how susceptible their drinking water source is to potential contamination sources. Examples of means of notifying the public, and examples of acceptable public notification materials, are available from the Division. The public notification materials must be approved by the Executive Secretary prior to distribution.

R309-605-8. DWSP for Ground-Water Sources Under the Direct Influence of Surface Water Sources.

(1) DWSP for ground-water sources under the direct influence of surface water sources will be accomplished through delineation of both the ground-water and surface water contribution areas. The requirements of R309-600 will apply to the ground-water portion, and the requirements of R309-605 will apply to the surface water portion, except that the schedule for such DWSP plans under this section will be based on the schedule shown in R309-605-4(1).

R309-605-9. New Surface Water Sources of Drinking Water.

(1) Prior to constructing a new surface water source of drinking water, each PWS shall develop a preliminary evaluation report (PER) which demonstrates that the source location has been chosen such that the number of uncontrolled sources in zones 1 and 2 is minimized. If the source water is not currently classified as Class 1C under UAC R317-2, the PWS must request such a classification from the Water Quality Board for zones 1 and 2. The PWS must also request that the source water be categorized as High Quality Waters - Category 1 or 2 under UAC R317-2-3 (Antidegradation Policy), if applicable.

In addition, engineering information in accordance with R309-204-4 and R309-204-5 (general source development and surface water source development requirements) must be submitted to the Executive Secretary concurrent with the PER. A complete DWSP plan is required, one year after approval of the PER and after construction of the source intake, following the requirements of R309-605-7.

(2) Preliminary Evaluation Report (PER) for New Sources of Drinking Water - PERs shall cover all four zones. PERs should be developed in accordance with the "Standard Report Format for New Surface Sources." This document may be obtained from the Division. PWSs shall include the following four sections in each PER:

(a) Delineation Report for Estimated DWSP Zones - The same requirements apply as in R309-605-7(3).

(b) Susceptibility Analysis and determination (including inventory)- The same requirements apply as in R309-605-7(4).

(c) Land Use Map - A land use map which includes all land within zones one and two and the primary use of the land (residential, commercial, industrial, recreational, crops, animal husbandry, etc). Existing maps or GIS data may be used to satisfy this requirement.

(d) Documentation of Division of Water Quality classification of source water - with reference to R317-2, provide documentation of the classification of the source waters by the Water Quality Board/Division of Water Quality (see also R309-605-9(1)), and of any associated petition for a change in classification.

(3) DWSP Plan for New Sources of Drinking Water - The PWS shall submit a DWSP Plan in accordance with R309-605-4 for any new surface water source of drinking water within one year after the date of the Executive Secretary's concurrence letter with the PER. In developing this DWSP Plan, PWSs shall refine the information in the PER by applying any new characteristics of the source.

R309-605-10. Contingency Plans.

PWSs shall submit a Contingency Plan which includes all sources of drinking water (groundwater and surface water) for their entire water system to the Executive Secretary concurrently with the submission of their first DWSP Plan. The Contingency Plan shall address emergency response, rationing, water supply decontamination, and development of alternative sources.

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R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.

1.1 "Absorption system" means a device constructed under the ground surface to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.2 "Board" means the Utah Water Quality Board.

1.3 "BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

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

1.5 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

1.6 "CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

1.7 "Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

1.8 "Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

1.9 "Division" means the Utah State Division of Water Quality.

1.10 "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

1.11 "Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

1.12 "Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

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

1.14 "Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

1.15 "Influent" means the total wastewater flow entering a wastewater treatment works.

1.16 "Large underground wastewater disposal system" means the same type of device as described under 1.1.13 above, except that it is designed to handle more than 5,000 gallons per day of domestic wastewater which originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other wastewater disposal system not covered in 1.1.13 above. The Board controls the installation of such systems.

1.17 "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

1.18 "Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

1.19 "Polished Secondary Treatment" means a treatment process that can produce an effluent meeting or exceeding the following standards:

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 15 mg/l, nor shall the arithmetic mean exceed 20 mg/l during any 7-day period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 10 mg/l, nor shall the arithmetic mean exceed 12 mg/l during any 7-day period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 200 per 100 ml or 20 per 100 ml respectively, nor shall the geometric mean exceed 250 per 100 ml or 25 per 100 ml respectively during any 7-day period; or, the geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 13 per 100 ml nor shall the geometric mean exceed 16 per 100 ml during any 7-day period.

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

1.20 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.21 "Seepage trench" means a modified seepage pit, an absorption system consisting of trenches filled with coarse filter material into which septic tank effluent is discharged.

1.22 "Seepage pit" means an absorption system consisting of a covered pit into which effluent is discharged.

1.23 "Septic tank" means a water-tight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an underground absorption system meeting the requirements of these regulations.

1.24 "Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

1.25 "Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

1.26 "SS" means suspended solids.

1.27 Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

1.28 "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

1.29 "Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

1.30 "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by

wastes is not included.

1.31 "Waters of the state" means all streams, lakes, ponds, marshes, water-courses, 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 and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

1.32 "Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It usually consists of a building sewer, a septic tank, and an absorption system. It includes onsite wastewater systems and large underground wastewater disposal systems.

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these regulations.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers), except to an existing sewer system, without first receiving a permit to do so from the Board or its authorized representative, except as provided in R317-1-2.5. Issuance of such permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

2.3 Submission of Plans. Any person desiring a permit as required by R317-1-2.2, shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Division for review.

2.4 Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these regulations.

2.5 Exceptions.

A. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with regulations for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the regulations shall be determined by an on-site inspection by the appropriate health authority.

B. Small Animal Waste (Manure) Lagoons. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.6 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these regulations and under circumstances which assure compliance with water quality standards in R317-2.

2.7 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these regulations and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

R317-1-3. Requirements for Waste Discharges.

3.1 Deadline For Compliance With Water Quality Standards.

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

3.2 Deadline For Compliance With Secondary Treatment Requirements.

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

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

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

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 ml or 200 per 100 ml respectively, nor shall the geometric mean exceed 2500 per 100 ml or 250 per 100 ml respectively, during any 7-day period; or, the geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 ml nor shall the geometric mean exceed 158 per 100 ml respectively during any 7-day period. Exceptions to this requirement may be allowed by the Board on a case-by-case basis where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

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

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

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

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

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

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

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

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

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

3.3 Extensions To Deadlines For Compliance.

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

3.4 Pollutants In Diverted Water Returned To Stream.

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

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these regulations shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Board as being feasible and equally protective of human health and the environment.

4.2 Submittal of Reuse Project Plan. If a person intends to reuse or provide for the reuse of treated domestic wastewater directly for any purpose, except on the treatment plant site as described in R317-1-4.6, a Reuse Project Plan must be submitted to the Division of Water Quality. A copy of the plan must also be submitted to the local health department. Any needed construction of wastewater treatment and delivery systems would also be covered by a construction permit as required in section R317-1-2.2 of this rule. The plan must contain the following information. At least items A and B should be provided before construction begins. All items must be provided before any water deliveries are made.

A. A description of the source, quantity, quality, and use of the treated wastewater to be delivered, the location of the reuse site, and how the requirements of this rule would be met.

B. Evidence that the State Engineer has agreed that the proposed reuse project planned water use is consistent with the water rights for the sources of water comprising the flows to the treatment plant which will be used in the reuse project.

C. An operation and management plan to include:

1. A copy of the contract with the user, if other than the treatment entity.

2. A labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines. Guidance for distribution systems is available from the Division of Water Quality.

3. Schedules for routine maintenance.

4. A contingency plan for system failure or upsets.

D. If the water will be delivered to another entity for distribution and use, a copy of the contract covering how the requirements of this rule will be met.

4.3 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Likely (Type I)

A. Uses Allowed

1. Residential irrigation, including landscape irrigation at individual houses.

2. Urban uses, which includes non-residential landscape irrigation, golf course irrigation, toilet flushing, fire protection, and other uses with similar potential for human exposure.

3. Irrigation of food crops where the applied reclaimed water is likely to have direct contact with the edible part. Type I water is required for all spray irrigation of food crops.

4. Irrigation of pasture for milking animals.

5. Impoundments of wastewater where direct human contact is likely to occur.

6. All Type II uses listed in 4.4.A below.

B. Required Treatment Processes

1. Secondary treatment process, which may include activated sludge, trickling filters, rotating biological contactors, oxidation ditches, and stabilization ponds. The secondary treatment process should produce effluent in which both the BOD and total suspended solids concentrations do not exceed 25 mg/l as a monthly mean.

2. Filtration, which includes passing the wastewater through filter media such as sand and/or anthracite or approved membrane processes.

3. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, membrane processes, or other approved processes.

C. Water Quality Limits. The quality of effluent before use must meet the following standards. Testing methods and procedures shall be performed according to Standards Methods for Examination of Water and Wastewater, eighteenth edition, 1992, or as otherwise approved by the Executive Secretary.

1. The monthly arithmetic mean of BOD shall not exceed 10 mg/l as determined by daily composite sampling. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The daily arithmetic mean turbidity shall not exceed 2 NTU, and turbidity shall not exceed 5 NTU at any time. Turbidity shall be measured continuously. The turbidity standard shall be met prior to disinfection. If the turbidity standard cannot be met, but it can be demonstrated to the satisfaction of the Executive Secretary that there exists a consistent correlation between turbidity and the total suspended solids, then an alternate turbidity standard may be established. This will allow continuous turbidity monitoring for quality

control while maintaining the intent of the turbidity standard, which is to have 5 mg/l total suspended solids or less to assure adequate disinfection.

3. The weekly median E. coli concentration shall be none detected, as determined from daily grab samples, and no sample shall exceed 9 organisms/100 ml.

4. The total residual chlorine shall be measured continuously and shall at no time be less than 1.0 mg/l after 30 minutes contact time at peak flow. If an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Executive Secretary that the alternative process is comparable to that achieved by chlorination with a 1 mg/l residual after 30 minutes contact time. If the effectiveness cannot be related to chlorination, then the effectiveness of the alternative disinfection process must be demonstrated by testing for pathogen destruction as determined by the Executive Secretary. A 1 mg/l total chlorine residual is required after disinfection and before the reclaimed water goes into the distribution system.

5. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be automatically activated if turbidity exceeds or chlorine residual drops below the instantaneous required value for more than 5 minutes. 2. Any irrigation must be at least 50 feet from any potable water well. Impoundments of reclaimed water, if not sealed, must be at least 500 feet from any potable water well.

3. Requirements for ground water discharge permits, if required, shall be determined in accordance with R317-6.

4. For residential landscape irrigation at individual homes, additional quality control restrictions may be required by the Executive Secretary. Proposals for such uses should also be submitted to the local health authority to determine any conditions they may require.

4.4 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Unlikely (Type II)

A. Uses Allowed

1. Irrigation of sod farms, silviculture, limited access highway rights of way, and other areas where human access is restricted or unlikely to occur.

2. Irrigation of food crops where the applied reclaimed water is not likely to have direct contact with the edible part, whether the food will be processed or not (spray irrigation not allowed).

3. Irrigation of animal feed crops other than pasture used for milking animals.

4. Impoundments of wastewater where direct human contact is not allowed or is unlikely to occur.

5. Cooling water. Use for cooling towers which produce aerosols in populated areas may have special restrictions imposed.

6. Soil compaction or dust control in construction areas.

B. Required Treatment Processes

1. Secondary treatment process, which may include activated sludge, trickling filters, rotating biological contactors, oxidation ditches, and stabilization ponds. Secondary treatment should produce effluent in which both the BOD and total suspended solids do not exceed 25 mg/l as a monthly mean.

2. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, membrane processes, or other approved processes.

C. Water Quality Limits. The quality of effluent before use must meet the following standards. Testing methods and procedures shall be performed according to Standards Methods for Examination of Water and Wastewater, eighteenth edition, 1992, or as otherwise approved by the Executive Secretary.

1. The monthly arithmetic mean of BOD shall not exceed 25 mg/l as determined by weekly composite sampling. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The monthly arithmetic mean total suspended solids concentration shall not exceed 25 mg/l as determined by daily composite sampling. The weekly mean total suspended solids concentration shall not exceed 35 mg/l.

3. The weekly median E. coli concentration shall not exceed 126 organisms/100 ml, as determined from daily grab samples, and no sample shall exceed 500 organisms/100 ml.

4. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

5. At the discretion of the Executive Secretary, the sampling frequency to determine compliance with water quality limits for effluent from lagoon systems used to irrigate agricultural crops, may be reduced to monthly grab sampling for BOD, and weekly grab sampling for E. coli, TSS and pH.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be available in case quality requirements are not met.

2. Any irrigation must be at least 300 feet from any potable water well. Spray irrigation must be at least 300 feet from areas intended for public access. This distance may be reduced or increased by the Executive Secretary, based on the type of spray irrigation equipment used and other factors. Impoundments of reclaimed water, if not sealed, must be at least 500 feet from any potable water well.

3. Requirements for ground water discharge permits, if required, shall be determined in accordance with R317-6.

4. Public access to effluent storage and irrigation or disposal sites shall be restricted by a stock-tight fence or other comparable means which shall be posted and controlled to exclude the public.

4.5 Records. Records of volume and quality of treated wastewater delivered for reuse shall be maintained and submitted monthly in accordance with R317-1-2.7. If monthly operating reports are already being submitted to the Division of Water Quality, the data on water delivered for reuse may be submitted on the same form.

4.6 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

4.7 Other Uses of Effluents. Proposed uses of effluents not identified above, including industrial uses, shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

4.8 Reclaimed Water Distribution Systems. Where reclaimed water is to be provided by pressure pipeline, unless contained in surface pipes wholly on private property and for agricultural purposes, the following requirements will apply. The requirements will apply to all new systems constructed after May 4, 1998, and it is recommended that the accessible portions of existing reclaimed water distribution systems be retrofitted to comply with these rules. Requirements for secondary irrigation systems proposed for conversion from use of non-reclaimed water to use with reclaimed water will be considered on an individual basis considering protection of public health and the environment. Any person or agency that is constructing all or part of the distribution system must obtain a construction permit from the Division of Water Quality prior to beginning

construction.

A. Distribution Lines

1. Minimum Separation.

a. Horizontal Separation. Reclaimed water main distribution lines parallel to potable (culinary) water lines shall be installed at least ten feet horizontally from the potable water lines. Reclaimed water main distribution lines parallel to sanitary sewer lines shall be installed at least ten feet horizontally from the sanitary sewer line if the sanitary sewer line is located above the reclaimed water main and three feet horizontally from the sanitary sewer line if the sanitary sewer line is located below the reclaimed water main.

b. Vertical Separation. At crossings of reclaimed water main distribution lines with potable water lines and sanitary sewer lines the order of the lines from lowest in elevation to highest should be; sanitary sewer line, reclaimed water line, and potable water line. A minimum 18 inches vertical separation between these utilities shall be provided as measured from outside of pipe to outside of pipe. The crossings shall be arranged so that the reclaimed water line joints will be equidistant and as far as possible from the water line joints and the sewer line joints. If the reclaimed water line must cross above the potable water line, the vertical separation shall be a minimum 18 inches and the reclaimed water line shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to the depth of the potable water line from the ground surface. If the reclaimed water line must cross below the sanitary sewer line, the vertical separation shall be a minimum 18 inches and the reclaimed water line shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to the depth of the reclaimed water line from the ground surface.

c. Special Provisions. Where the horizontal and/or vertical separation as required above cannot be maintained, special construction requirements shall be provided in accordance with requirements in R317-3 for protection of potable water lines. Existing pressure lines carrying reclaimed water shall not be required to meet these requirements.

2. Depth of Installation. To provide protection of the installed pipeline, reclaimed water lines should be installed with a minimum depth of bury of three feet.

3. Reclaimed Water Pipe Identification.

a. General. All new buried pipe, including service lines, valves, and other appurtenances, shall be colored purple, Pantone 522 or equivalent. If fading or discoloration of the purple pipe is experienced during construction, identification tape is recommended. Locating wire along the pipe is also recommended.

b. Identification Tape. If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple field, color Pantone 512 or equivalent, having the words, "Caution: Reclaimed Water-- Do Not Drink". The overall width of the tape shall be at least three inches. Identification tape shall be installed 12 inches above the transmission pipe longitudinally and shall be centered.

4. Conversion of existing water lines. Existing water lines that are being converted to use with reclaimed water shall first be accurately located and comply with leak test standards in accordance with AWWA Standard C-600 and in coordination with regulatory agencies. The pipeline must be physically disconnected from any potable water lines and brought into compliance with current State cross connection rules and requirements (R309-102-5), and must meet minimum separation requirements in section 4.8.A.1 of this rule above. If the existing lines meet approval of the water supplier and the Division, the lines shall be approved for reclaimed water distribution. If regulatory compliance of the system (accurate location and verification of no cross connections) cannot be verified with record drawings, televising, or otherwise, the lines shall be uncovered, inspected, and identified prior to use. All accessible portions of the system must be retrofitted to meet the requirements of this rule.

5. Valve Boxes and Other Surface Identification. All valve covers shall be of non-interchangeable shape with potable water covers, and shall have an inscription cast on the top surface stating "Reclaimed Water". Valve boxes shall meet AWWA standards. All above ground facilities shall be consistently color coded (purple, Pantone 512) and marked to differentiate reclaimed water facilities from potable water facilities.

6. Blow-off Assemblies. If either an in-line type or end-of-line type blow-off or drain assembly is installed in the system, the Division of Water Quality shall be consulted on acceptable discharge or runoff locations.

B. Storage. If storage or impoundment of reclaimed water is provided, the following requirements apply:

1. Fencing. For Type I effluent, no fencing is required by this rule, but may be required by local laws or ordinances. For Type II effluent, see R317-1-4.4.D.4 above.

2. Identification. All storage facilities shall be identified by signs prepared according to the requirements of Section 4.8.D.6 below. Signs shall be posted on the surrounding fence at minimum 500 foot intervals and at the entrance of each facility. If there is no fence, signs shall be located as a minimum on each side of the facility or at minimum 250 foot intervals or at all accessible points.

C. Pumping Facilities.

1. Marking. All exposed and above ground piping, fittings, pumps, valves, etc., shall be painted purple, Pantone 512. In addition, all piping shall be identified using an accepted means of labeling reading "Caution: Reclaimed Water - Do Not Drink." In a fenced pump station area, signs shall be posted on the fence on all sides.

2. Sealing Water. Any potable water used as seal water for reclaimed water pumps seals shall be protected from backflow with a reduced pressure principle device.

D. Other Requirements.

1. Backflow Protection. In no case shall a connection be made between the potable and reclaimed water system. If it is necessary to put potable water into the reclaimed distribution system, an approved air gap must be provided to protect the potable water system. A reduced pressure principle device may be used only when approved by the Division of Water Quality, the local health department, and the potable water supplier.

2. Drinking Fountains. Drinking fountains and other public facilities shall be placed out of any spray irrigation area in which reclaimed water is used, or shall be otherwise protected from contact with the reclaimed water. Exterior drinking fountains and other public facilities shall be shown and called out on the construction plans. If no exterior drinking fountains, picnic tables, food establishments, or other public facilities are present in the design area, then it shall be specifically stated on the plans that none are to exist.

3. Hose Bibs. Hose bibs on reclaimed water systems in public areas and at individual residences shall be prohibited. In public, non-residential areas, replacement of hose bibs with quick couplers is recommended.

4. Equipment and Facilities. To ensure the protection of public health, any equipment or facilities such as tanks, temporary piping or valves, and portable pumps which have been used for conveying reclaimed water may not be reused for conveying potable water.

5. Warning Labels. Warning labels shall be installed on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, and temporary construction services. The labels shall indicate the system contains reclaimed water that is unsafe to drink.

6. Warning signs. Where reclaimed water is stored or

impounded, or used for irrigation in public areas, warning signs shall be installed and contain, as a minimum, 1/2 inch purple letters (Pantone 512) on a white or other high contrast background notifying the public that the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Warning signs and labels shall read, "Warning: Reclaimed Water - Do Not Drink". The signs shall include the international symbol for Do Not Drink.

R317-1-5. Use of Industrial Wastewaters.

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503 and R317-550-7.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

R317-1-7. TMDLs.

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

7.1 Bear River -- December 23, 1997
7.2 Chalk Creek -- December 23, 1997
7.3 Otter Creek -- December 23, 1997
7.4 Little Bear River -- May 23, 2000
7.5 Mantua Reservoir -- May 23, 2000
7.6 East Canyon Creek -- September 1, 2000
7.7 East Canyon Reservoir -- September 1, 2000
7.8 Kents Lake -- September 1, 2000
7.9 LaBaron Reservoir -- September 1, 2000
7.10 Minersville Reservoir -- September 1, 2000
7.11 Puffer Lake -- September 1, 2000
7.12 Scofield Reservoir -- September 1, 2000
7.13 Onion Creek (near Moab) -- July 25, 2002
7.14 Cottonwood Wash -- September 9, 2002
7.15 Deer Creek Reservoir -- September 9, 2002
7.16 Hyrum Reservoir -- September 9, 2002
7.17 Little Cottonwood Creek -- September 9, 2002
7.18 Lower Bear River -- September 9, 2002
7.19 Malad River -- September 9, 2002
7.20 Mill Creek (near Moab) -- September 9, 2002
7.21 Spring Creek -- September 9, 2002
7.22 Forsyth Reservoir -- September 27, 2002
7.23 Johnson Valley Reservoir -- September 27, 2002
7.24 Lower Fremont River -- September 27, 2002
7.25 Mill Meadow Reservoir -- September 27, 2002
7.26 UM Creek -- September 27, 2002
7.27 Upper Fremont River -- September 27, 2002
7.28 Deep Creek -- October 9, 2002
7.29 Uinta River -- October 9, 2002
7.30 Pineview Reservoir -- December 9, 2002
7.31 Browne Lake -- February 19, 2003

R317-1-8. Penalty Criteria for Civil Settlement Negotiations.

8.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to $10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to $25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

8.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

8.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - $7,000 to $10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.

2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - $2,000 to $7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.

2. Creation of a serious hazard to public health or the environment.

3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.

4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - $500 to $2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.

2. Substantial non-compliance with the requirements of a compliance schedule.

3. Substantial non-compliance with monitoring and reporting requirements.

4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.

5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to $500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.

2. Minor violations of compliance schedule requirements.

3. Minor violations of reporting requirements.

4. Illegal discharges not covered in Categories A, B and C.

5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case.

8.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

A. The project must be in addition to all regulatory compliance obligations;

B. The project preferably should closely address the environmental effects of the violation;

C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

D. The project must primarily benefit the environment rather than benefit the violator;

E. The project must be judicially enforceable;

F. The project must not generate positive public perception for violations of the law.

8.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

KEY: water pollution, waste disposal, industrial waste, effluent standards
April 20, 2005 19-5

Notice of Continuation October 7, 2002

R317. Environmental Quality, Water Quality.
R317-3. Design Requirements for Wastewater Collection, Treatment and Disposal Systems.
R317-3-1. Technical and Procedural Requirements.

1.1. Scope of This Rule

A. General. This rule is intended to aid the logical development, from feasibility study to startup, of a wastewater collection, treatment and disposal project.

B. Authority. Construction permits and approvals are issued pursuant to the provisions of Sections 19-5-107 and 19-5-108. Violation of construction permit or approval including compliance with the conditions thereof, or beginning of construction, or modification without the executive secretary's approval, is subject to the penalties provided in Section 19-5-115.

C. Applicability

1. This rule applies to:

a. communities, sewerage agencies, industries, and federal or state agencies (hereinafter referred to as the applicant), and

b. i. construction, installation, modification or operation of any treatment works or part thereof or any extension or addition thereto, or

ii. construction, installation, modification or operation of any establishment or any extension or modification or addition to it, the operation of which would probably result in a discharge.

2. The applicant must not advertise the project for bids and must not begin construction without receiving a construction permit.

D. Requirements

1. The design requirements in this rule are for collection, treatment and disposal of wastewater largely originating from domestic sources. These criteria are intended to be limiting values for items upon which an evaluation of such plans and specifications will be made and to establish, as far as practicable, uniformity of practice. This rule also provides for a mechanism to apply water pollution control research and recommendations for further evaluation by the design engineer.

2. Communities, and the engineering profession should discuss with the staff of the executive secretary possible combinations of wastewater treatment and disposal processes or situations not covered in detail by this rule.

E. Construction Permit and Approvals

1. When a Permit or an Approval is Issued. A construction permit or an approval is issued when the applicant has met all requirements of this rule, including any additional requirements of funding programs administered by the executive secretary. The applicant or the designee or the consultant should meet with the staff of the executive secretary to discuss the plan of study before undertaking extensive engineering studies for construction of treatment works. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

2. Variance. The executive secretary may grant a variance from the minimum requirements stated in this rule, subject to site-specific consideration and justification, but not overriding safeguarding of public health or protection of water quality or engineering practice. The applicant must submit pertinent and relevant material in support of a variance from the minimum requirements.

3. Limitations

a. The issuance of a construction permit does not relieve in any way the applicant of the obligation to obtain other approvals and permits, i.e., ground water discharge permit, clearances etc., from other agencies which may have jurisdiction over the project.

b. The permit will expire at the end of one year from the date of issuance if the approved project is not under substantial construction. Plans and specifications must be resubmitted for review and reissuance of the expired permit.

F. Definitions

1. The annual average daily rate of flow is defined as:

a. an average of daily rates of flow over a period of not less than one year; or

b. the rate of flow equal to or greater than 50 percent of the daily flow rate data.

2. The average design rate of flow or the average peak-monthly rate of flow is defined as:

a. a moving average of daily rates of flow over a thirty consecutive days; or over a period of month whichever produces a higher rate of flow; or

b. the rate of flow equal to or greater than 92 percent of the daily flow rate data.

3. The maximum design rate of flow or peak-daily rate of flow is defined as:

a. the maximum rates of flow over a 24 hour period; or

b. the rate of flow equal to or greater than 99.7 percent of the daily flow data.

4. The peak design rate of flow or peak-hourly rate of flow is defined as:

a. the maximum rate of flow over a 60-minute period; or

b. the rate of flow equal to or greater than 99.9 percent of the daily flow data.

5. The minimum daily rate of flow is defined as the minimum rate of flow over a twenty-four hour period.

6. Industrial waste flow is defined as the maximum rate of flow for each of industries tributary to the sewer system.

7. Other Definitions. Other definition of terms and their use in this rule is intended to be in accordance with:

a. R317-1 (Definitions and General Requirements), and

b. Glossary - Water and Wastewater Control Engineering, jointly prepared by American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and Water Pollution Control Federation (WPCF).

8. Units of Expression The units of expression used are in accordance with those recommended in WPCF Manual of Practice Number 6, Units of Expression for Wastewater Treatment.

9. Terms

a. The term shall is used where practice is standardized to permit specific delineation of requirements or where safeguarding of the public health or protection of water quality justifies such definite action.

b. Other terms, such as should, recommended, preferred, indicate desirable procedures or methods, with deviations subject to individual consideration and justification, but not overriding safeguarding of public health or protection of water quality or engineering practice.

c. Desirable procedures or methods may be mandatory requirements for projects using state or federal funds.

1.2. Engineering Report

A. The Scope of the Report

1. The applicant or the applicant's consulting engineer should submit an engineering report to the executive secretary at least 60 days before the date when action by the executive secretary is desired. The report shall be prepared under the direction of a registered professional engineer licensed to practice in the State of Utah. The report must establish the need, scope, basis and viability for:

a. all projects involving innovative treatment and disposal processes, and

b. collection and pumping systems handling flows in excess of 1 million gallons per day (3,785 cubic meters per day).

2. The documents submitted for formal approval should

include all pertinent and relevant material to aid in the review of the submitted reports.

B. What is Required in the Report

1. The magnitude and complexity of the project will determine the scope of the report.

2. The report must provide basic information; criteria and assumptions; evaluation of alternate projects, with preliminary layouts and cost estimates; assessment of environmental factors; financing methods, anticipated charges for users; organizational and staffing requirements; conclusions or recommendations with a proposed project for consideration; and an outline of official actions and procedures required to implement the project.

3. The report should detail various concepts (including process description and sizing), factual data, and controlling assumptions and considerations for the functional planning of sewerage facilities. These data form the continuing technical basis for the detailed design and preparation of construction plans and specifications.

4. The report should include preliminary architectural, structural, mechanical, and electrical designs, sketches and outline specifications of process units, special equipment, etc.

5. The applicant or the consultant must address specific program and funding requirements in the report.

6. A detailed topical outline is available from the division.

C. Supplemental Requirements for Lagoons and Land Application. The engineer's report shall contain pertinent information on location, geology, hydrology, hydrogeology, soil conditions, area for expansion and any other factors that will affect the feasibility and acceptability of the proposed lagoon and land application projects.

1. Project Location. The engineer's report shall include on a 7.5-minute US Geological Survey topographic map showing the following within two mile (3.22 kilometers) radius of the proposed project site:

a. the location and direction of all residences, commercial developments, parks, recreational areas, land requirements for future additional treatment units and increased waste loadings, and land use zoning of area;

b. elevations and contours of the site and adjacent area;

c. watercourses and water supplies (including a log of each well, unless waived by the executive secretary);

d. location, depth, and discharge point of any field tile in the immediate area of the proposed site;

e. buffer zones;

f. limits of all flood plains, public drinking water supply watersheds and inland wetlands; and

g. natural site drainage zones.

2. Soil Borings and Geology. The applicant must determine representative subsurface soil characteristics and geology of the project site using a number of soil borings logged by an independent soil testing laboratory. At least one boring shall be a minimum of 25 feet (7.6 meters) in depth or into bedrock, whichever is shallower. The borings shall be filled and sealed. The report must address the following items as a minimum:

a. depth, type and texture of soil, all confirmed field data by the Soil Conservation Service (US Department of Agriculture);

b. hydraulic conductivity of the project site or the lagoon bottom as determined in the field, and lagoon bottom materials;

c. soil chemical properties such as, pH, nutrient levels, cation exchange capacity, etc.;

d. depth to bedrock;

e. bedrock type;

f. geologic discontinuities - faults, fractures, sinkholes;

g. jointing and permeability of rock.

3. Ground Water Issues

a. ground water depth confirmed by field investigations, for various seasons, including data from the period between March and May;

b. location of perched water tables;

c. ground water contours;

d. direction of ground water movement and flow;

e. ground water points of discharge;

f. available analyses of site ground water quality and drinking water wells in the vicinity, including but not limited to: coliform bacteria, pH, nitrates, total nitrogen, chlorides, sulfates, and total hardness;

g. a description of the depth and type of all water supply wells within two-mile (3.22 kilometers) radius of the proposed project site;

h. ground water monitoring needs using a system of wells or lysimeters around the perimeter of the project site; and

i. compliance with the requirements of R317-6 (Ground Water Quality Protection Rules) including securing a ground water discharge permit.

4. Climate Data

a. total precipitation for each month;

b. mean number of days per year with temperatures less than or equal to 32 degrees Fahrenheit (0 degree Centigrade);

c. wind velocities and direction;

d. evapotranspiration data.

D. Reports on Supplementary Investigations. Reports on soils, foundation, geological and hydrogeological investigations must be submitted by the applicant or the consultant, to the executive secretary. These reports are supplementary to a proposal, predesign or design report, plans and specifications for all projects. The reports must focus on any existing site conditions which may affect feasibility or constructibility of the project. If such problems do exist, mitigative and remedial measures thereto must be recommended by the applicant's consultant. The basis of conclusions reached should be supported with relevant and detailed information, graphically and narratively. The recommendations must be incorporated in the design.

1.3. Predesign Report

A. A predesign report must be prepared for the projects designed to:

1. treat domestic sewage flow in excess of 5 million gallons per day (18,900 cubic meters per day); or

2. incorporate emerging, innovative and alternative technologies.

B. The report must be submitted for review and approval by the division. The report shall include a summary of process design criteria, the basis of design, process and hydraulic profiles, outline of all appurtenant facilities, and supporting information.

C. Approval of a predesign report represents an agreement-in-principle subject to receipt, review and approval of satisfactory engineering plans and specifications. Such agreement-in-principle will be modified or revised in light of new information that may become available later. Also, an approval of prefinal documents is not an authorization to advertise the project for bids or to begin construction; but allows the applicant to proceed with preparing final engineering drawings and specifications.

1.4. Construction Plans

A. General. A complete set of construction drawings covering all disciplines shall be submitted for review in fulfillment of the requirements of this rule. The size, complexity and nature of the project will determine the extent of involvement of various disciplines. Such disciplines are, but not necessarily limited to, Civil, Structural, Mechanical, Architectural, Mechanical, Electrical, Geotechnical, Instrumentation, Heating, Ventilating and Air Conditioning etc. All designs shall be in accordance with the requirements of applicable local, state and federal rules or regulations, the latest recognized practice standards including the Uniform Building

Code, the National Electrical Code, the Uniform Mechanical Code, the Uniform Plumbing Code and other industry standards. The plans shall be clear, legible and suitable for microfilming or image processing.

1. Standard Information

a. Plans shall show a suitable project title, the name of municipality, sewer district, sewerage agency, sponsoring institution or industry, current revision date, and the name of engineer in charge of the project, engineer's registration number, an imprint of registration seal and signature.

b. Plans shall be drawn to a scale which will permit all necessary information to be plainly shown. Numerical and graphical scales in foot-pound-second (FPS or English) system shall be shown. The use of the international system (metric or MKS or meter-kilogram-second) of units is encouraged.

c. All plan views shall indicate a north point, preferably in a standardized direction. A suitable geographical reference for the project shall also be shown. Topographical and elevation data should be presented on a recognized standard datum. Such datum should be clearly indicated.

2. Vicinity and Location Plans. A large scale vicinity map should be provided for a suitable geographical reference to the project. It should also indicate vehicular access to the project.

3. General Site Work Plans.

a. A site plan showing the project lay out should be included to establish a reference to the existing features. Similarly, a reduced-scale site or key plan should be drawn on all drawings to provide the context of work shown on the drawing to the site.

b. For the entire project site, information shall be provided on topography, survey data, location of test borings, limits of work, staging area for contractors, areas of project related site work, and other work that may overlap the areas of concentrated work activities. Information shall be compiled to the extent practicable on utility locations, above and below ground utilities which might interfere with the proposed construction, particularly water mains, gas mains, storm drains, and telephone and power conduits, outside piping, all known existing structures, security improvements, roads, signage, lighting, and other site improvements. Compiled information should be shown on plans.

4. Detailed Plans. Construction to be performed in areas of concentrated work such as individual installations, buildings, rooms or assemblies shall be shown on the detailed plans. Such plans shall show plan views, elevations, sections and supplementary views which, together with the specifications and general layouts, provide the working information for the contract and construction of the works. They shall also include detailed design data in all applicable disciplines, dimensions and relative elevations of structures, the location and outline form of equipment, location size of piping, water levels, water surface and hydraulic profiles, and ground elevations.

B. Plans for Sewers. Construction plans are required to be submitted for projects involving new sewer systems. Projects for substantial additions to the existing systems are required to be submitted only in fulfillment of the requirements of the funding agency. These plans must detail the following information:

1. Geographical Features

a. Topography and elevations. Existing or proposed improvements, streets, the boundaries of all streams and water impoundments, and water surfaces shall be clearly shown. Contour lines at suitable intervals should be included.

b. Streams. The direction of flow in all natural or artificial streams, and high and low water elevations of all water surfaces at sewer outlets shall be shown.

2. Boundaries. The boundary lines of the municipality or the sewer district, and the area to be sewered, shall be shown.

3. Sewers. The plan shall show the location, size and direction of flow of all existing and proposed sanitary sewers draining to the treatment works concerned.

4. Plans and Profiles. Detailed plans and profiles shall be submitted. Profiles should have a horizontal scale of not more than 100 feet to the inch and vertical scale of not more than 10 feet to the inch. Plan views should be drawn to a corresponding horizontal scale and preferably be shown on the same sheet. Plans and profiles shall show:

a. Location of streets and sewers;

b. ground surface; size of pipe; length between manholes; manhole identifiers, such as numbers etc.; invert and surface elevation at each manhole; and grade of sewer between each two adjacent manholes;

c. the elevation and location of the basement floor on the profile of the sewer, showing feasibility to serve adjacent basements except where otherwise noted on the plans; and

d. Locations of all special features such as inverted siphons, concrete encasements, elevated sewers, special construction to implement proper separation from water mains etc.

5. Detailed drawings, made to a scale to clearly show the nature of the design, shall be furnished to show the following particulars:

a. all stream crossings and sewer outlets, with elevations of the stream bed and of normal and extreme high and low water levels;

b. details of all special sewer joints, pipeline construction or installation, and cross-sections; and

c. details of all sewer appurtenances such as manholes, inspection chambers, inverted siphons, regulators, flow measurement or control stations and elevated sewers.

C. Plans for Pumping Stations. Construction plans shall be submitted for construction or modifications of pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day). These plans must detail the following information besides vicinity, site and location, and engineering information required:

1. Vicinity, Site and General Site Work Plans

a. the location and extent of the tributary area;

b. any municipal boundaries within the tributary area;

c. the location of the pumping station and force main, and pertinent elevations; and

d. availability of power sources, including alternative sources.

2. Detailed Plans. Detailed plans shall be submitted showing the following:

a. topography of the site with all pertinent elevations;

b. soils or foundation report;

c. existing pumping station with all adjacent improvements;

d. proposed pumping station, including provisions for installation of future pumps or ejectors, emergency power generation, and other reliability features;

e. maximum hydraulic gradient including calculations in downstream gravity sewers when all installed pumps are in operation; and

f. elevation of high water at the site, and maximum elevation of sewage in the collection system upon occasion of power failure.

D. Plans for Treatment Plants. Construction plans shall be submitted for construction or modifications of treatment plants. These plans must detail the following information besides vicinity, site and location, and engineering information required:

1. Location Plan. A plan shall be submitted showing the treatment plant in relation to the remainder of the system.

2. General Layout. Layouts of the proposed treatment plant shall be submitted, showing:

a. topography of the site;

b. size and location of plant structures, and adjacent

improvements;

c. schematic flow diagram(s), including mass balance, showing the flow through various plant units, and showing utility systems serving the plant processes;

d. outside or yard piping, including any arrangements for bypassing individual units (Materials handled and direction of flow through pipes shall be shown.); and

e. hydraulic profiles, including calculations, showing the flow of the major liquid or solid process streams including raw or treated sewage, supernatant liquor, scum and sludge.

3. Detailed Plans. Detailed plans shall show the following:

a. location, dimensions, and elevations of all existing and proposed plant facilities;

b. elevations of a 100-year water level of the body of water to which the plant effluent is to be discharged;

c. type, size, pertinent features, and operating capacity of all pumps, blowers, motors, and other mechanical devices;

d. schematics, sectional or isometric views of all process and utility piping not shown on the General Site Work Plans;

e. hydraulic profile at the minimum, average, and maximum rate of flow; and

f. description of any features not otherwise covered by other drawings or specifications or engineer's report.

1.5. Technical Specifications. Complete technical specifications for the construction of sewers, pumping stations, treatment plants, and all other appurtenances, shall accompany the plans. The specifications accompanying construction drawings shall include all construction information not shown on the drawings which is necessary to inform the builder in detail of the design requirements for the quality of materials, workmanship and fabrication of the project. They shall also include: the type, size strength, operating characteristics, and rating of equipment; allowable infiltration; the complete requirements for all mechanical and electrical equipment, including machinery, valves, piping, and jointing of pipe; electrical apparatus, wiring, instrumentation, and meters; laboratory fixtures and equipment; operating tools, construction materials; special filter materials, such as, stone, sand, gravel, or slag; miscellaneous appurtenances; chemicals when used; instructions for testing materials and equipment as necessary to meet design standards; and performance tests for the completed work and component units. Performance tests must be conducted at design load conditions wherever practical.

1.6. Revisions to the Approved Plans and Specifications. Any changes, such as addenda, change orders, field change etc., to the approved plans or specifications affecting capacity, flow, operation of units, or point or quality of discharge shall be submitted for review and approval before any such change is made in either contract documents or construction. Plans or specifications proposed to be so revised must, therefore, be submitted at least 30 days in advance of any construction work which will be affected by such changes to permit sufficient time for review and approval. Changes under emergency conditions may be communicated verbally, and then submitted in writing. Structural revisions or other minor changes not affecting capacities, flows, or operation are to be permitted during construction without approval.

1.7. Construction Supervision. The applicant must demonstrate that adequate and competent inspection will be provided during construction. It is the responsibility of the applicant to provide frequent and comprehensive inspection of the project.

1.8. Plan of Operation

A. Submittal. A plan of operation must be prepared at the mid-point of construction, but no later than at the time of 80 percent completion of construction, unless waived by the executive secretary on the basis of funding program requirements, and the scope and the complexity of the project.

B. Contents of the Plan. The plan of operation must provide a concise, sequential description of and implementation schedule for the following activities:

1. hiring and training of operators;
2. start-up schedules and services;
3. safety programs, plans and procedures;
4. emergency operations procedures and plan;
5. process monitoring program;
6. laboratory and testing services;
7. user charge and pretreatment program, necessary to assure cost-effective, efficient and reliable startup and operation of the facility, future expansion and upgrade; and
8. maintenance of water quality and public health.

1.9. Operation and Maintenance Manual

A. Submittal. A draft of the manual must be submitted at the mid-point of construction, unless waived by the executive secretary on the basis of funding program requirements, and the scope and the complexity of the project. Final draft must be submitted for review and approval, no later than at the 90 percent stage of construction in the final form or 30 days prior to startup, whichever occurs first.

B. Contents of the Manual

1. The manual presents procedures to facilitate operation and maintenance of the plant under all conditions, technical guidance for troubleshooting, and requirements for compliance with the permits and approvals issued. The manual must address the needs of the system being employed and must be directed toward the level of training required of the operating staff.

2. The manual must include all information pertinent for the facilities besides information from manufacturers' catalogs or brochures.

1.10. Start-up

A. Certificate of Completion. The engineer in charge of construction management or inspection of the approved project or facilities shall submit a certificate, bearing the seal of the professional engineer, to the effect that the facilities were constructed in accordance with approved plans, specifications, addenda and change orders to the owner with a copy thereof to the division.

B. Authorization to Operate. The applicant will request a final inspection the division upon receipt of the certificate of completion. No facilities may be placed in service before the final inspection by the division, and authorization to operate the facility is issued in writing by the executive secretary.

C. As-built or Record Drawings.

1. Within 30 days of acceptance by the owner of wastewater or industrial waste facilities from the contractor, a copy of such acceptance must be submitted to the division for record.

2. As-built or record drawings clearly showing the as-built project shall be submitted to the executive secretary within 120 days after the completion of the construction of the approved project or facilities.

1.11. Operation During Construction

A. Construction-related Bypass. Operation of all existing sewers, pump stations, and treatment plants must continue without interruption during the construction of new facilities or modification of existing facilities. Therefore, bypassing will not be allowed except under extenuating circumstances. If this is not possible and construction will result in the discharge of partially treated and untreated sewage into the surface waters of the state, an approval for such a discharge shall be required from the executive secretary before such discharge occurs.

B. Request for a Construction-related Bypass. A formal request for the consideration of a construction-related bypass shall be submitted to the executive secretary by the permittee not less than 90 days prior to the date of proposed bypass initiation. Such request shall contain at least the following

information:

1. a detailed description of the construction work to be performed which the owner has deemed warrants a bypass;

2. an analysis of all known alternatives which would eliminate or reduce the need for plant bypassing;

3. cost-benefit and effective analysis of alternatives, including an assessment of resource damages;

4. the minimum and maximum duration of bypassing under each alternative;

5. the applicant's preferred alternative for conducting the bypass;

6. the projected date of initiation of bypass.

C. Approval or Denial of a Construction-related Bypass

1. The request for a construction-related bypass will be approved or denied following a thorough review with due consideration of compliance with the discharge permit(s); water quality standards; and all known available and reasonable methods to abate water pollution.

2. An approval issued to permit bypass will contain all restrictions necessary to minimize the duration of bypassing. A denial determination will state the reasons for the denial and will direct the permittee to initiate a plan of action to implement an alternative to bypassing.

1.12. Innovative Processes Evaluation

A. Basic requirements. The executive secretary will consider the evaluation of innovative approaches to wastewater treatment in the interest of encouraging advances in technology, processes, equipment and material not covered by this rule, provided that:

1. a favorable recommendation has been made by a professional engineer licensed to practice in Utah, following his own evaluation of developmental processes or equipment or material, for a specific project;

2. the applicant has capital and technical resources to replace or modify developmental processes, equipment and material with conventional processes, equipment and material;

3. the risk incurred with the experimentation rests solely with the proponent of processes, equipment and material as evidenced by the written acknowledgement to the executive secretary; and

4. the applicant will replace the failed processes, equipment and material with a proven conventional processes, equipment and material as evidenced by the written acknowledgement to the executive secretary.

B. Approval Limitations

1. The executive secretary may approve developmental processes, equipment and material may be approved in the form of terms and conditions to a construction permit, when reliable operating data from full scale installations are not available. The term and conditions may include such as, but not necessarily limited to, demonstration period for a successful application, requirements to submit reports on the operation of the system during the experimental period.

2. The executive secretary may limit the number of approvals for the same developmental processes, equipment and material until reliable and valid operational experience is gained.

C. Evaluation Criteria. The evaluation of innovative processes will include the following factors:

1. anticipated performance of the system in full scale field conditions,

2. ability to consistently meet required effluent and water quality standards,

3. any evidence of equivalence to conventional technology,

4. the owner's ability to finance, and to operate and maintain the system with the level of expertise necessary, and

5. submission of process descriptions, schematics, reports, monitoring and performance data, costs, specific studies, bench scale test data and pilot plant test data, and any other information appropriate and necessary for the evaluation.

R317-3-2. Sewers.

2.1. General. Construction of a new sewer system project may not begin unless the applicant has submitted an engineering report detailing the design, and construction plans to the executive secretary for review and approval evidenced by a construction permit. The executive secretary will not normally review construction plans for extensions of the existing sewer systems to new areas or replacement of sanitary sewers in the existing sewer systems unless requested or required by state or federal funding programs. Rain water from roofs, streets, and other areas, and ground water from foundation drains must not be allowed to enter the sewer system through planning, design and construction quality assurance and control measures.

2.2. Basis of Design

A. Planning Period. Sewers should be designed for the estimated ultimate tributary population or the 50-year planning period, whichever requires a larger capacity. The executive secretary may approve the design for reduced capacities provided the capacity of the system can be readily increased when required. The maximum anticipated capacity required by institutions, industrial parks, etc. must be considered in the design.

B. Sewer Capacity. The required sewer capacity shall be determined on the basis of maximum hourly domestic sewage flow; additional maximum flow from industrial plants; inflow; ground water infiltration; potential for sulfide generation; topography of area; location of sewage treatment plant; depth of excavation; and pumping requirements.

1. Per Capita Flow. New sewer systems shall be designed on the basis of an annual average daily rate of flow of 100 gallons per capita per day (0.38 cubic meter per capita per day) unless there are data to indicate otherwise. The per capita rate of flow includes an allowance for infiltration/inflow. The per capita rate of flow may be higher than 100 gallons per day (0.38 cubic meter per day) if there is a probability of large amounts of infiltration/inflow entering the system.

2. Design Flow

a. Laterals and collector sewers shall be designed for 400 gallons per capita per day (1.51 cubic meters per capita per day).

b. Interceptors and outfall sewers shall be designed for 250 gallons per capita per day (0.95 cubic meter per capita per day), or rates of flow established from an approved infiltration/inflow study.

c. The executive secretary will consider other rates of flow for the design if such basis is justified on the basis of supporting documentation.

C. Design Calculations. Detailed computations, such as the basis of design and hydraulic calculations showing depth of flow, velocity, water surface profiles, and gradients shall be submitted with plans.

2.3. Design and Construction Details

A. Minimum Size

1. No gravity sewer shall be of less than eight inches (20 centimeters) in diameter.

2. A 6-inch (15 centimeters) diameter pipe may be permitted when the sewer is serving only one connection, or if the applicant justifies the need for such diameter on the basis of supporting documentation.

B. Depth. Sewers should be sufficiently deep to receive sewage from basements and to prevent freezing. Insulation shall be provided for sewers that cannot be placed at a depth sufficient to prevent freezing.

C. Odor and Sulfide Generation. The design shall incorporate features to control and mitigate odor and sulfide generation in sewers. Such features may include steeper slope to achieve higher velocity, reaeration through induced

turbulence, etc.

D. Slope

1. The pipe diameter and slope shall be selected to obtain velocities to minimize settling problems.

2. All sewers shall be designed and constructed to give mean velocities of not less than 2 feet per second (0.61 meter per second), when flowing full, based on Manning's formula using an n value of 0.013.

3. Sewers shall be laid with uniform slope between manholes.

4. Table R317-3-2.3(D)(4) shows the minimum slopes which shall be provided; however, slopes greater than these are desirable.

E. Flatter Slopes. Slopes flatter than those required for the 2-feet-per-second (0.61 meter per second)-velocity criterion when flowing full, may be permitted by the executive secretary provided that:

1. there is no other practical alternative;

2. the depth of flow is not less than 30 percent of the diameter at the average design rate of flow;

3. the design engineer has furnished with the report the computations showing velocity and depth of flow corresponding to the minimum, average and peak rates of flow for the present and design conditions in support of the request for variance; and

4. the operating authority of the sewer system submits a written acknowledgement of the ability to provide any additional sewer maintenance required by flatter slopes.

F. Steep Slopes

1. Where velocities greater than 15 feet per second (4.6 meters per second) are attained, special provision shall be made to protect against displacement by erosion and shock.

2. Sewers on 20 percent slopes or greater shall be anchored securely against lateral and axial displacement with suitable thrust blocks, concrete anchors or other equivalent restraints, spaced as follows:

a. Not over 36 feet (11 meters) center to center on grades 20 percent and up to 35 percent;

b. Not over 24 feet (7.3 meters) center to center on grades 35 percent and up to 50 percent;

c. Not over 16 feet (4.9 meters) center to center on grades 50 percent and over.

G. Alignment. Sewers 24 inches (61 centimeters) in diameter or less shall be laid with a straight alignment between manholes. The alignment shall be checked by either using a laser beam or lamping.

H. Changes in Pipe Size. When a smaller sewer joins a large one, the invert of the larger sewer should be lowered sufficiently to maintain the same energy gradient. An approximate method for securing these results is to place the 0.8 depth point of both sewers at the same elevation.

I. Materials

1. The material of pipe selected should be suitable for local conditions. The material of sewer pipe should be compatible with factors such as industrial wastewater characteristics, putrecibility, physical and chemical properties of adjacent soil, heavy external loading, etc.

2. The material of pipe must withstand superimposed loads without any damage. The design of trench widths and depths should allow for loads. Special bedding, concrete cradle or encasement, or other special construction may be used to withstand extraordinary superimposed loading.

2.4. Curved Sewers. Curved sewers are permitted only under circumstances where conventional sewer construction is not feasible. A conceptual approval must be obtained before beginning the design.

A. Design

1. The minimum radius of curvature shall be greater than 200 feet or one-half of the maximum deflection angle for the material of pipe allowed by the manufacturer.

2. The design n value for the sewer pipe shall be 0.018.

3. Only one horizontal curve in the sewer alignment will be allowed between manholes. No vertical curves shall be permitted.

4. Manhole spacing shall not exceed 400 feet (122 meters).

5. Manholes must be provided at the beginning and the end of a curved alignment (i.e. change in radius of curvature).

6. The design should consider increased erosion potential due to high velocities.

B. Other Requirements

1. Maintenance equipment shall be available at all times for inspection and cleaning.

2. Horizontal and vertical alignment of the sewer after the construction must be verified and certified by a registered professional engineer.

a. Accurate record or as-built drawings must be prepared showing the physical location of the pipe in the ground, and submitted to the division in accordance with the requirements of R317-3-1.

2.5. Installation Requirements

A. Standards

1. The technical specifications shall require that installation be in accordance with the requirements based on the criteria, standards and procedures established by:

a. this rule;

b. recognized industry standards and practices as published in their technical publications;

c. the product manufacturer's recommendations and guidance;

d. Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code and National Electrical Code;

e. American Society of Testing Materials;

f. American National Standards Institute; and

g. Occupational Safety and Health Administration (OSHA), US Department of Labor or its succeeding agencies.

2. Requirements shall be set forth in the specifications for the pipe and methods of bedding and backfilling thereof so as not to damage the pipe or its joints, impede cleaning operations and future tapping, nor create excessive side fill pressures or ovalation of the pipe, nor seriously impair flow capacity.

B. Identification of Sewer Lines. A clearly labelled tracer location tape shall be placed two feet above the top of sewer lines less than or equal to 24 inch (61 centimeters) in diameter, along its entire length.

C. Deflection Test

1. Deflection test shall be performed on all flexible pipes. The test shall be conducted after the final backfill has been in place at least 30 days.

2. No pipe shall show a deflection in excess of 5 percent.

3. If the deflection test is run using a rigid ball or mandrel, it shall have a diameter equal to 95 percent of the inside diameter of the pipe. The test shall be performed without mechanical pulling devices.

D. Joints and Infiltration

1. Joints. The installation procedures of joints and the materials to be used shall be included in the specifications. Sewer joints shall be designed to minimize infiltration and to prevent the entrance of roots throughout the life of the system.

2. Leakage Tests. Procedures for leakage tests shall be specified. This may include appropriate water or low pressure air testing. The leakage outward or inward (exfiltration or infiltration) shall not exceed 200 gallons per inch of pipe diameter per mile per day (0.19 cubic meter per centimeter of pipe diameter per kilometer per day) for any section of the system. An exfiltration or infiltration test shall be performed with a minimum positive head of 2 feet (0.61 meter). The air test, if used, shall, as a minimum, conform to the test procedure described in the American Society of Testing Materials

standards. The testing methods selected should take into consideration the range in ground water elevations projected during the test.

E. Inspection

1. The specifications shall include requirements for inspection of manholes for water-tightness prior to placing in service, including television inspection.

2. Records of television inspection shall be retained for future reference.

2.6. Manholes

A. Location. Manholes shall be installed at:

1. the end of each line exceeding 150 feet (46 meters) in length;

2. all changes in grade, size, or alignment;

3. all intersections; and

4. distances not greater than:

a. 400 feet (120 meters) for sewers 15 inches (38 centimeters) or less; and

b. 500 feet (150 meters) for sewers 18 inches (46 centimeters) to 30 inches (76 centimeters).

5. Distances up to 600 feet (180 meters) may be approved in cases where adequate cleaning equipment for such spacing is provided.

6. Greater spacing may be permitted in larger sewers.

7. Cleanouts shall not be substituted for manholes nor installed at the end of lines greater than 150 feet (46 meters) in length.

B. Drop Type Manholes

1. A drop pipe should be provided for a sewer entering a manhole at an elevation of 24 inches (61 centimeters) or more above the manhole invert. Where the difference in elevation between the incoming sewer and manhole invert is less than 24 inches (61 centimeters), the invert should be filleted to prevent solids deposition.

2. Drop manholes should be constructed with an outside drop connection. If an inside drop connections is necessary, it shall be secured to the interior wall of the manhole and provide access for cleaning.

3. Due to the unequal earth pressures that would result from the backfilling operation in the vicinity of the manhole, the entire outside drop connection shall be encased in concrete.

C. Diameter. The minimum diameter of manholes shall be 48 inches (1.22 meters); larger diameter manholes are preferable for large diameter sewers. A minimum diameter of 22 inches (56 centimeters) shall be provided for safe access.

D. Flow Channel. The flow channel through manholes should be made to conform in shape and slope to that of the sewers. The depth of flow channels should be up to one-half to three-quarters of the diameter of the sewer. Adjacent floor area should drain to the channel with the minimum slope of 1 inch per foot (8.3 centimeters per meter).

E. Watertightness

1. Manholes shall be of the pre-cast concrete or poured-in-place concrete type. Manholes shall be waterproofed on the exterior.

2. Inlet and outlet pipes shall be joined to the manhole with a gasketed flexible watertight connection arrangement that allows differential settlement of the pipe and manhole wall to take place.

3. Watertight manhole covers shall be used wherever the manhole tops may be flooded by street runoff or high water. Locked manhole covers may be desirable in isolated easement locations or where vandalism may be a problem.

F. Electrical. Electrical equipment installed or used in manholes shall conform to appropriate National Electrical Code requirements.

2.7. Inverted Siphons. Inverted siphons shall consist of at least two barrels, with a minimum pipe size of 6 inches (15 centimeters) with an arrangement to exclude debris and solids. The siphon shall be provided with necessary appurtenances for convenient flushing and maintenance. The manholes shall have adequate clearances for rodding; and in general, sufficient head shall be provided and pipe sizes selected to secure velocities of at least 3.0 feet per second (0.92 meter per second) for average flows. The inlet and outlet details shall be so arranged that the normal flow is diverted to 1 barrel, and that either barrel may be cut out of service for cleaning. The vertical alignment should permit cleaning and maintenance.

2.8. Sewers In Relation To Streams

A. Location of Sewers on Streams

1. The top of all sewers entering or crossing streams shall be at a sufficient depth below the natural bottom of the stream bed to protect the sewer line. In general, the following cover requirements must be met:

a. one foot (30 centimeters) of cover is required where the sewer is located in bedrock;

b. three feet (90 centimeters) of cover is required in other material;

c. cover in excess of 3 feet (90 centimeters) may be required in streams having a high erosion potential; and

d. in paved stream channels, the top of the sewer must be placed below the bottom of the channel pavement.

2. If the proposed sewer crossing will not interfere with the future improvements to the stream channel, then reduced cover may be permitted.

B. Horizontal Location. Sewers shall be located along streams outside of the stream bed and sufficiently removed therefrom to provide for future possible stream widening and to prevent pollution by siltation during construction.

C. Structures. The sewer outfalls, headwalls, manholes, gate boxes, or other structures shall be located so they do not interfere with the free discharge of flood flows of the stream.

D. Alignment

1. Sewers crossing streams should be designed to cross the stream as nearly at right angles to the stream flow as possible, and shall be free from change in grade.

2. Sewer systems shall be designed to minimize the number of stream crossings.

E. Construction

1. Materials. Sewers entering or crossing streams shall be constructed of cast or ductile iron pipe with mechanical joints; otherwise they shall be constructed so they will remain watertight and free from changes in alignment or grade. Material used to backfill the trench shall be stone, coarse aggregate, washed gravel, or other materials which will not cause siltation.

2. Siltation and Erosion. Construction methods that will minimize siltation and erosion shall be employed. The design engineer shall include in the project specifications the method(s) to be employed in the construction of sewers in or near streams to provide adequate control of siltation and erosion. Specifications shall require that cleanup, grading, seeding, and planting or restoration of all work areas shall begin immediately. Exposed areas shall not remain unprotected for more than seven days.

F. Aerial Crossings

1. A carrier pipe shall be provided for all aerial sewer crossings. Support shall be provided for all joints in pipes utilized for aerial crossings. The supports shall be designed to prevent frost heave, overturning and settlement.

2. Precautions against freezing, such as insulation and increased slope, shall be provided. Expansion jointing shall be provided between above-ground and below-ground sewers.

3. The design engineer shall consider the impact of flood waters and debris for aerial stream crossings. The bottom of the pipe should be placed below the elevation of twenty-five (25) year flood. Crossings, in no case, shall block the channel.

2.9. Protection of Water Supplies. The applicant must

review the requirements stated in R309-112-2 - Distribution System Rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

A. Water Supply Interconnections. There shall be no physical connections between a public or private potable water supply system and a sewer, or appurtenance thereto which would permit the passage of any sewage or polluted water into the potable supply. No water pipe shall pass through or come in contact with any part of a sewer manhole.

B. Relation to Water Mains

1. Horizontal Separation

a. Sewers shall be laid at least 10 feet (3.0 meters) horizontally from any existing water main. The distance shall be measured edge to edge. In cases where it is not practical to maintain a ten foot separation, a deviation may be allowed based on the supportive data from the design engineer. Such deviation may allow installation of the sewer closer to a water main, provided that the sewer is laid:

(1) in a separate trench, or

(2) on an undisturbed earth shelf located on one side of the sewer trench, or

(3) in the sewer trench which has been backfilled and compacted to not less than 95 percent of the optimum density as determined by the ASTM Standard D-690, as amended, and

b. In each of the above cases, the bottom of the water main shall be at least 18 inches (46 centimeters) above the top of the sewer.

2. Crossings. Sewers crossing above water mains shall be laid to provide a minimum vertical distance of 18 inches (46 centimeters) between the outside of the water main and the outside of the sewer. The crossing shall be arranged so that the sewer joints will be equidistant and as far as possible from the water main joints. Where a water main crosses under a sewer, adequate structural support shall be provided for the sewer to prevent damage to the water main.

3. Special Conditions. When it is impossible to obtain proper horizontal and vertical separation as stated above, the sewer shall be designed and constructed of cast iron, ductile iron, galvanized steel or protected steel pipe with mechanical joints for the minimum distance of 10 feet on either side of the point of crossing. The design engineer may use other types of joints if equivalent joint integrity is demonstrated. The lines shall be pressure tested to assure watertightness before backfilling.

R317-3-3. Sewage Pumping Stations.

3.1. General. Sewage pumping station structures, and electrical and mechanical equipment shall be protected from physical damage that would be caused by a 100-year flood. Sewage pumping stations must remain fully operational and accessible during a 25-year flood.

3.2. Design

A. Pumping Rates. The pumps and controls of main pumping stations, and especially pumping stations pumping to the treatment works or operated as part of the treatment works, should be selected to operate at varying delivery rates to permit discharging sewage at approximately its rate of delivery to the pump station.

B. System - Head Calculation

1. The design engineer shall submit system-head calculations and curves. System-head curves for C values of 100, 120 and 140 in the Hazen William's equation for calculating head loss corresponding to minimum, median and maximum water levels shall be developed.

2. A system-head curve for C value of 120 corresponding to median (normal operating) water level shall be used to make preliminary selection of motor and pump. The pump and motor must operate satisfactorily over the entire range of system-head curves for C values of 100 and 140 corresponding to minimum and maximum water levels intersected by the head-discharge relationship of a given pump.

3. Pumps and motors shall be sized for the 10-year peak flows; preferably the 20-year sewage flow requirements. These operating points shall be shown on the system-head curves.

C. Accessibility. The pumping station shall be readily accessible by maintenance vehicles during all weather conditions. The facility should be located off the traffic way of streets and alleys.

D. Grit. Where it is necessary to pump sewage before grit removal, the design of the wet well and pump station piping shall be such that operational problems from the accumulation of grit are avoided.

E. Odor and Corrosion Control. The pumping station design should incorporate measures for:

1. mitigating the effects of sulfide corrosion to structure and equipment; and

2. effective odor control when a populated area is within close proximity.

F. Structures

1. Dry wells, including their superstructure, shall be completely separated from the wet well.

2. Provision shall be made to facilitate maintenance and removal of pumps, motors, and other mechanical and electrical equipment.

3. Safe means of access and proper ventilation shall be provided to dry wells and to wet wells containing either bar screens or mechanical equipment requiring inspection or maintenance.

a. For built-in-place pump stations, a stairway with rest landings shall be provided at vertical intervals not to exceed 12 feet (3.7 meters). For factory-built pump stations over 15 feet (4.6 meters) deep, a rigidly fixed landing shall be provided at vertical intervals not to exceed 10 feet (3.0 meters). Where a landing is used, a suitable and rigidly fixed barrier shall be provided to prevent an individual from falling past the intermediate landing to a lower level.

b. Where space requirements are insufficient, the design may provide for a manlift or elevator in lieu of landings in a factory-built station if the design includes an emergency access or exit.

c. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code, etc., must be reviewed and complied with. Those requirements, if more stringent than the ones stated above, shall be incorporated in the design.

4. Construction Materials. The materials selected in construction and installation must be safe and able to withstand adverse operating environmental conditions caused by presence of hydrogen sulfide and other corrosive gases, greases, oils, and other constituents frequently present in sewage.

3.3. Pumps and Pneumatic Ejectors

A. Multiple Units

1. At least two pumps or pneumatic ejectors shall be provided. A minimum of three pumps shall be provided for stations handling flows greater than 1 million gallons per day (3,785 cubic meters per day).

2. If only two units are provided, they should have the same capacity. Each shall be capable of handling flows in excess of the expected maximum flow. Where three or more units are provided, they should be designed to fit actual flow conditions and must be of such capacity that with any one of the largest units out of service, the remaining units shall have capacity to handle maximum sewage flows.

B. Protection Against Clogging

1. Pumps handling sewage from 30 inch (76 centimeters) or larger diameter sewers shall be protected by readily accessible bar racks from clogging or damage.

2. Bar racks should have clear openings not exceeding 1-

1/2 inches (6.4 centimeters). The design shall provide for a mechanical hoist.

3. The design engineer shall consider installation of mechanically cleaned and duplicate bar racks in the pumping stations handling larger than five million gallons per day (18,900 cubic meters per day) rate of flow.

4. Small pumping stations pumping less than one million gallons per day (3,785 cubic meters per day) shall be equipped with bar racks or inline grinding devices, etc., to prevent clogging.

C. Pump Openings. Except where grinder pumps are used, pumps shall be capable of passing spheres of at least 3 inches (7.6 centimeters) in diameter, and pump suction and discharge piping shall be at least 4 inches (10.2 centimeters) in diameter.

D. Priming. The pump shall be so placed that it will operate under a positive suction head under normal operating conditions, except for submersible pumping stations.

E. Electrical Equipment. Electrical systems and components (e.g., motors, lights, cables, conduits, switchboxes, and control circuits) in raw sewage wet wells, or in enclosed or partially enclosed spaces where hazardous concentrations of flammable gases or vapors may be present, shall comply with the National Electrical Code requirements for Class 1 Group D, Division 1 locations. In addition, equipment located in the wet well shall be suitable for use under corrosive conditions. Each flexible cable shall be provided with watertight seal and separate strain relief. A fused disconnect switch located above ground shall be provided for all pumping stations. When such equipment is exposed to weather, it shall as a minimum, meet the requirements of weatherproof equipment (NEMA 3R).

F. Intake. Each pump should have an individual intake. Turbulence should be avoided near the intake in wet wells. Intake piping should be as straight and short as possible.

G. Dry Well Dewatering. A separate sump pump equipped with dual check valves shall be provided in dry wells to remove leakage or drainage. Discharge shall be located as high as possible. A connection to the pump suction is also recommended as an auxiliary feature. Water ejectors connected to a potable water supply will not be approved. All floor and walkway surfaces should have an adequate slope to a point of drainage. Pump seal water shall be piped to the sump.

H. Controls

1. Type. Control systems for liquid level monitoring shall be of the air bubbler type, the capacitance type, the encapsulated float type, or the non-contact type. The selection of type of controls must be based on wastewater characteristics and other site related conditions. The executive secretary may approve the existing float-tube control systems on pumping stations being upgraded. The electrical equipment shall comply with the National Electrical Code requirements for Class I, Group D, Division 1 locations.

2. Location. The level control system shall be located away from the turbulence of incoming flow and pump suction.

3. Alternation. The design engineer must consider automatic alternation of the sequencing of pumps in use.

I. Valves

1. Suction Line. An isolation valve shall be placed on the suction line of each pump except on submersible pumps.

2. Discharge Line

a. Isolation and check valves shall be placed on the discharge line of each pump. The check valve shall be located between the isolation valve and the pump.

b. Check valves shall not be placed in the vertical run of discharge piping unless the valve is designed for that specific application.

c. Ball valves may be permitted in the vertical runs.

d. All valves shall be suitable for the material being handled, and capable of withstanding normal operating pressure and water hammer.

e. Where limited pump backspin will not damage the pump and low discharge head conditions exist, a short individual force main for each pump, may be approved by the executive secretary in lieu of a discharge manifold.

3. Location. Valves shall not be located in wet well. They shall be located in a dry well adjacent to the pumps or in an adjacent isolated pit appropriately protected from physical, weather or freezing damage, with proper access for operation and maintenance.

J. Wet Wells

1. Divided Wells. Wet well should be divided into multiple sections, properly interconnected, to facilitate repairs and cleaning, and non-turbulent hydraulic operating condition to each pump inlet.

2. Size. The wet well size and level control settings shall be appropriate to avoid heat buildup in the pump motor due to frequent starting (short cycling), and septic conditions due to excessive detention time.

3. Floor Slope. The wet well floor shall have a minimum slope of one to one to the hopper bottom. The horizontal area of the hopper bottom shall be not greater than necessary for proper installation and function of the pump inlet.

K. Ventilation. All pump stations must be ventilated to maintain safe operating environment. Where the pump pit is below the ground surface, mechanical ventilation is required, so arranged as to independently ventilate the dry well and the wet well if screens or mechanical equipment requiring maintenance or inspection are located in the wet well. There shall be no interconnection between the wet well and dry well ventilation systems. In pits over 15 feet (4.6 meters) deep, multiple inlets and outlets are recommended. Dampers should not be used on exhaust or fresh air ducts. Fine screens or other obstructions in air ducts should be avoided to prevent clogging. Switches for operation of ventilation equipment should be marked and located for convenient operation from outside of the enclosed environment. All intermittently operated ventilating equipment shall be interconnected with the respective pit lighting system. Automatic controls are recommended for intermittently ventilated pump stations. Fan parts should be of non-corrosive material. All parts adjacent to moving ones should be of non-sparking materials. Consideration should be given to installation of automatic heating and dehumidification equipment.

1. Wet Wells. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least 12 complete air changes per hour; if intermittent, at least 30 complete air changes per hour. Ventilating equipment should force air into wet well rather than exhaust it from wet well.

2. Dry Wells. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least 6 complete air changes per hour; if intermittent, at least 30 complete air changes per hour.

L. Flow Measurement. Continuous measuring and recording of sewage flow shall be provided at all pumping stations with a design pumping capacity greater than one million gallons per day (3,785 cubic meters per day).

M. Water Supply. There shall be no physical connection between any potable water supply and a sewage pumping station which under any condition might cause contamination of the potable water supply. The potable water supply to a pumping station shall be protected against cross connection or backflow.

3.4. Self-Priming Pumps. Self-priming pumps shall be capable of rapid priming and repriming at the lead pump on elevation. Such self-priming and repriming shall be accomplished automatically under design operating conditions. Suction piping should not exceed the size of the pump suction and shall not exceed 25 feet (7.6 meters) in total length. Priming lift at the lead pump on elevation shall include a safety factor of at least 4 feet (1.2 meters) from the maximum

allowable priming lift for the specific equipment at design operating conditions. The combined total of dynamic suction lift at the pump off elevation and required net positive suction head at design operating conditions shall not exceed 22 feet (6.7 meters).

3.5. Submersible Pump Stations. Submersible pump stations may be used for flows less than 0.25 million gallons per day (946 cubic meters per day). The executive secretary may approve submersible pump stations for flows greater than 0.25 million gallons per day (946 cubic meters per day), based on operational, reliability and maintenance considerations. The submersible pumps stations shall meet the design requirements stated above, except as modified in this section.

A. Construction. Submersible pumps and motors shall be designed specifically for raw sewage use, including totally submerged operation during a portion of each pumping cycle. An effective method to detect shaft seal failure or potential seal failure shall be provided, and the motor shall be of squirrel-cage type design without brushes or other arc-producing mechanisms.

B. Pump Removal. Submersible pumps shall be readily removable and replaceable without dewatering the wet well or disconnecting any piping in the wet well.

C. Electrical

1. Power Supply and Control. Electrical supply, control and alarm circuits shall be designed to allow for disconnection of the equipment from outside and inside of pumping station. Terminals and connectors shall be protected from corrosion by location outside of wet well or through use of watertight seals. If located outside of the pumping station, weatherproof equipment shall be used.

2. Controls. The motor control center shall be located outside of the wet well and be protected by a conduit seal or other appropriate measures meeting the requirements of the National Electrical Code, to prevent the atmosphere of the wet well from gaining access to the control center. The seal shall be so located that the motor may be removed and electrically disconnected without disturbing the seal.

3. Power Cord. Pump motor power cords shall be designed for flexibility and serviceability under severe service conditions and shall meet the requirements of the Mine Safety and Health Administration for trailing cables. Ground fault interruption protection shall be used to deenergize the circuit in the event of any failure in the electrical integrity of the cable. Power cord terminal fittings shall be corrosion-resistant and constructed in a manner to prevent the entry of moisture into the cable, shall be provided with strain relief appurtenances, and shall be designed to facilitate field connecting.

3.6. Valves. Valves shall be located in a separate valve pit. Accumulated water shall be drained to the wet well or the soil. If the valve pit is drained to the wet well, an effective method shall be provided to prevent sewage gases and liquid from entering the pit during surcharged wet well conditions.

3.7. Alarm Systems.

A. Alarm systems shall be provided for pumping stations. The alarm shall be activated in cases of power failure, high water level in dry or wet well, pump failure, use of the lag pump, air compressor failure, or any other pump malfunction.

B. Pumping station alarms shall be telemetered, including identification of the alarm condition, to the operating agency's facility that is manned 24 hours a day. If such a facility is not available and 24-hour holding capacity is not provided, the alarm shall be telemetered to the operating agency's facility during normal working hours and to the home of the person(s) responsible for the lift station during off-duty hours.

C. The executive secretary may approve audio-visual alarm systems with a self-contained power supply in lieu of the telemetering system outlined above, depending upon location, station holding capacity and inspection frequency.

3.8. Emergency Operation

A. Pumping stations and collection systems shall be designed to prevent bypassing of raw sewage and backup into the sewer system. For use during possible periods of extensive power outages, mandatory power reductions, or uncontrolled storm events, a controlled high-level wet well overflow or emergency power generator shall be provided. Where a high level overflow is utilized, storage or retention tanks, or basins, shall be provided having at least a 2-hour retention capacity at the anticipated overflow rate.

B. The applicant must review the requirements of R317-6 (Ground Water Quality Protection Rule) for compliance with the said rule for earthen retention basins.

C. The operating agency shall provide:

1. an in-place or portable pump, driven by an internal combustion engine or an emergency generator capable of pumping from the wet well to the discharge side of the station for pump stations with a capacity in excess of one million gallons per day (3,785 cubic meters per day), and

2. an engine-driven generating equipment or an independent source of electrical power or emergency generators capable of pumping from the wet well to the discharge side of the station for pump stations with a capacity in excess of five million gallons per day (18,925 cubic meters per day).

3.9. Auxiliary and Emergency Equipment Requirements

A. General. The following general requirements shall apply to all internal combustion engines used to drive auxiliary pumps, service pumps through special drives, or electrical generating equipment.

1. Engine Protection. The engine must be protected from damaging operating conditions. Protective equipment shall shut down the engine and activating an alarm on site unless continuous manual supervision is planned. Protective equipment shall monitor for conditions of low oil pressure and overheating, Oil pressure monitoring is not required for engines with splash lubrication.

2. Size. The engine shall have adequate rated power to start and continuously operate all connected loads.

3. Fuel Type. The type of fuel must be carefully selected for maintaining reliability and ease of starting, especially during cold weather conditions. Unused fuel from the fuel storage tank should be removed annually, and the tank refilled with fresh fuel.

4. Engine Ventilation. The engine shall be located above grade with adequate ventilation of fuel vapors and exhaust gases.

5. Routine Start-up. All emergency equipment shall be provided with instructions indicating the need for regular starting and running of such units at full loads.

6. Protection of Equipment. Emergency equipment shall be protected from damage at the restoration of regular electrical power.

B. Engine-Driven Pumping Equipment. Where permanently installed or portable engine-driven pumps are used, the following requirements in addition to general requirements apply:

1. Pumping Capacity. Engine-driven pump(s) shall be capable of pumping at the design pumping rates unless storage capacity is available for flows in excess of pump capacity. Pumps shall be designed for anticipated operating conditions, including suction lift if applicable.

2. Operation. Provisions shall be made for automatic and manual start-up and load transfer. The pump must be protected against damage from adverse operating conditions. Provisions should be considered to allow the engine to start and stabilize at operating speed before assuming the load. Where manual start-up and transfer is justified, storage capacity and alarm system must meet the requirements stated hereinabove.

3. Portable Generating Equipment. Where portable generating equipment or manual transfer of power to the

pumping equipment is provided, sufficient storage capacity shall be provided in the design of pumping station, to allow time for detection of pump station failure and transportation and connection of generating equipment. The use of special electrical connections and double throw switches are recommended for connecting portable generating equipment.

3.10. Instructions and Equipment

A. Sewage pumping stations and their operators must be supplied with a complete set of operational instructions, including emergency procedures, maintenance schedules, special tools, and necessary spare parts.

B. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code etc., must be reviewed and complied with. Those requirements take precedence over the foregoing requirements, if more stringent, and should be incorporated in the design.

3.11. Force Mains

A. Velocity. A velocity of not less than 2 feet per second (0.61 meter per second) shall be maintained at the average design flow, to avoid septic sewage and resulting odors.

B. Air Relief Valve. An automatic air relief valve shall be placed at high points in the force main to prevent air locking.

C. Termination. Force mains should enter the gravity sewer system at a point not more than 2 feet (30 centimeters) above the flow line of the receiving manhole.

D. Design Pressure. The force main and fittings, including reaction blocking, shall be designed to withstand normal pressure and pressure surges (water hammer).

E. Special Construction. Force main construction near streams or used for aerial crossings shall meet the requirements stated in Sewers.

F. Design Friction Losses

1. Friction losses through force mains shall be based on the Hazen and Williams formula or other hydraulic analysis to determine friction losses. When the Hazen and Williams formula is used, the design shall be based on the value of C equal to 120; for unlined iron or steel pipe the value of C equal to 100 shall be used.

2. When initially installed, force mains will have a significantly higher C factor. The higher C factor should be considered only in calculating maximum power requirements.

G. Separation from Water Main. The applicant or the design engineer must review the requirements stated in R309-112.2 - Distribution System rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

H. Identification. A clearly labelled tracer location tape shall be placed two feet above the top of force mains less than or equal to 24 inch (61 centimeters) in diameter, along its entire length.

R317-3-4. Treatment Works.

4.1. Plant Location

A. The treatment plant structures and all related equipment shall be protected from physical damage by the 100-year flood. Treatment works must remain fully operational and accessible during the 25-year flood.

B. These conditions shall apply to all new facilities under construction as well as the existing facilities being expanded, upgraded or modified.

4.2. Quality of Effluent. The effluent requirements and water quality standards established in the discharge permit, R317-1 (Definitions and General Requirements), R317-2 (Standards of Quality for Waters of the State) shall be used to determine the required degree of wastewater treatment, and unit processes and operations.

4.3. Design

A. Basis of Design. The plant design shall be based on the higher value of:

1. a moving average of daily rates of flow and wastewater strength as measured by five-day biochemical oxygen demand (BOD_5) and suspended solids determination tests over a period of 30 consecutive days; or

2. an average of values rate of flow and wastewater strength as measured by five-day biochemical oxygen demand (BOD_5) and suspended solids determination tests, over a period of month; or

3. the rate of flow and wastewater strength as measured by five-day biochemical oxygen demand (BOD_5) and suspended solids determination tests, equal to or greater than 92 percent of the daily flow rate and wastewater strength data.

B. Hydraulic Design. The hydraulic capacities of all units and conveyance structures shall be computed and checked for the maximum and average design rates of flow with one largest unit out of service. No overtopping of any structure under any condition shall be permitted.

1. New Systems. The design for sewage treatment plants shall be based upon an average daily per capita flow of 100 gallons (0.38 cubic meter) unless the applicant provides and justifies a better estimate of flow based on water use data. An allowance shall be made in the design for industrial wastewaters and rates of infiltration/inflow.

2. Existing Systems. For an existing system, the applicant may use the data based on both dry-weather and wet-weather conditions. The data over a minimum period of one year shall be taken as the basis for the design.

C. Organic Design

1. New System Design

a. Domestic waste treatment design shall be on the basis of at least 0.17 pounds (0.08 kilogram) or 200 milligrams per liter of BOD_5 per capita per day and 0.20 pounds (0.09 kilogram) or 250 milligrams per liter of suspended solids per capita per day, unless information is submitted to justify alternate designs.

b. When garbage grinders are used in areas tributary to a domestic treatment plant, the design basis may be increased to 0.22 pounds (0.10 kilogram) or 260 milligram per liter of BOD_5 per capita per day and 0.25 pounds (0.11 kilogram) or 300 milligram per liter of suspended solids per capita per day.

c. An allowance shall be made in the design for industrial wastewaters and rates of infiltration/inflow.

d. Other approved methods for measurement of organic strength of wastewater published in Standard Methods for Examination of Water and Wastewater, jointly prepared by American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and Water Pollution Control Federation (WPCF), will be accepted in lieu of the five-day biochemical oxygen demand (BOD_5) test.

2. Existing Systems

a. For an existing system, the applicant may use the data based on the actual strength of the wastewater as determined by analysis of composite samples for five-day biochemical oxygen demand (BOD_5) and suspended solids. An appropriate increment for growth shall be included in the basis of design.

b. The data over a minimum period of one year shall be taken as the basis for the design.

D. Shock Loadings. The applicant shall consider the shock loadings of high concentrations and diurnal peaks for short periods of time on the treatment process, particularly for small treatment plants.

E. Design by Analogy. The applicant may utilize the data from similar municipalities in the case of new systems, provided that the reliability and applicability of such data is established through thorough investigations and documentation.

F. Flow Conduits. All piping and channels shall be designed to carry the maximum rates of flows. The incoming sewer shall be designed for unrestricted flow. Bottom corners of the channels must be filleted. Conduits shall be designed to

avoid creation of pockets and corners where solids can accumulate. Suitable gates shall be placed in channels to seal off unused sections which might accumulate solids. The use of shear gates or stop planks is permitted where they can be used in place of gate valves or sluice gates. Corrosion resistant materials shall be used for these control gates.

G. Arrangement of Process Units. The design should provide for an arrangement of component parts of the plant, for greatest operating and maintenance convenience, reliability flexibility, economy, continuity of maximum effluent quality, and ease of installation of future units.

H. Flow Division Control. The design shall provide for flow division control facilities to insure organic and hydraulic loading control to various process units. Convenient, easy and safe access, change, observation, and maintenance shall be considered in the design of such facilities. Flow division shall be measured using flow measurement devices to assure uniform loading of all unit processes and operations.

4.4. Plant Design Details

A. Mechanical Equipment. The specifications should provide for:

1. services of a representative of the manufacturer to supervise the installation and initial operation of major items of mechanical equipment; and

2. performance tests of the installed equipment before acceptance by the applicant.

B. Unit Bypasses

1. A minimum of two units in the liquid treatment process train shall be provided for all unit processes and operations in all plants rated at over 1 million gallons per day (3,785 cubic meters per day).

2. The executive secretary will approve any exceptions based on reliability and operability of the components.

3. The design shall provide for properly located and arranged bypass structures and piping so that each unit of the plant can be removed from service independently. The bypass design shall facilitate plant operation during unit maintenance and emergency repair so as to minimize deterioration of effluent quality and insure rapid process recovery upon return to normal operational mode.

C. Unit Bypass During Construction. Any bypass during construction or operation must be approved by the executive secretary before such bypass occurs, as provided in this rule.

D. Drains. The design shall incorporate means to completely drain each unit with a discharge to a point within the process or the plant.

E. Protection of Structures. The design shall incorporate hydrostatic pressure relief devices to prevent flotation of structures.

F. Pipe Cleaning and Maintenance. Fittings, valves, and other appurtenances shall be provided for pipes subject to clogging, to facilitate proper cleaning through mechanical cleaning or flushing. Pipes subject to clogging, such as pipes carrying sludge, shall be lined with a material which creates a smooth and nonadhering surface, thereby reducing clogging and resistance to flow.

G. Construction Materials. The materials of construction and equipment shall be resistant to hydrogen sulfide and other corrosive gases, greases, oils, chemicals, and similar constituents frequently present in sewage. This is particularly important in the selection of metals and paints. Contact between dissimilar metals should be avoided to minimize galvanic action, and consequent corrosion.

H. Painting

1. Piping within the plant shall be color coded to facilitate identification of piping, particularly in the plants rated over 5 million gallons per day (18,925 cubic meters per day). Table R317-3-4.4(H)(1) shows color and identification scheme recommended by the American National Standards Institute (ANSI 253.1 and 13.1) shall be used for the purposes of standardization.

2. The labels shall be stenciled in conformance with the ANSI standard A13.1.

3. The executive secretary may approve painting of piping with one color with a labelling scheme in conformance with the ANSI standard A13.1 provided that:

a. labels are color coded as directed above;

b. piping contents and direction of flow are legibly stenciled on the label; and

c. labels are securely on the piping at interval and all locations required in the above referenced standard.

I. Operating Equipment. A complete outfit of tools, accessories, and spare parts necessary for the plant operator's use should be provided. Readily-accessible storage space and workbench facilities should be provided, and consideration be given to provision of a garage for large equipment storage, maintenance, and repair.

J. Erosion Control During Construction. Effective site erosion control shall be provided during construction.

K. Grading and Landscaping. The site should be graded and landscaped upon completion of the plant. Concrete or gravel walkways should be provided for access to all units. Steep slopes should be avoided to prevent erosion. Surface water shall not be permitted to drain into any unit. Particular care shall be taken to protect all treatment plant components from storm water runoff.

4.5. Plant Outfall Lines

A. Discharge Impact Control. The outfall sewer shall be designed to discharge to the receiving stream in a manner not to impair the beneficial uses of the receiving stream and acceptable to the executive secretary. The outfall design should provide for:

1. Free fall or submerged discharge at the site selected;

2. Cascading of effluent to increase dissolved oxygen concentration in the effluent; and

3. Limited or complete dispersion of discharge across stream to minimize impact on aquatic life movement, and growth in the immediate reaches of the receiving stream; and

B. Protection and Maintenance. The outfall sewer shall be so constructed and protected against the effects of floodwater, ice, or other hazards as to reasonably insure its structural stability and freedom from stoppage.

C. Sampling Provisions. All outfall lines shall be designed with a safe and convenient access, preferably using a manhole, so that a sample of the effluent can be obtained at a point after the final treatment process, and before discharge to or mixing with the receiving waters.

4.6. Essential Facilities

A. Emergency Power Facilities

1. General. All plants shall have an alternate source of electric or mechanical power to allow continuity of operation during power failures. Methods of providing alternate sources include:

a. provision of at least two independent sources of power, such as feeders, grid, etc., to the plant;

b. portable or in-place internal combustion engine equipment which will generate electrical or mechanical energy; or

c. portable pumping equipment when only emergency pumping is required.

2. Power for Aeration. Standby power generating capacity normally is not required for aeration equipment used in the activated sludge type processes or aerated lagoons. In cases where a history of long-term (4 hours or more) power outages have occurred, auxiliary power for minimum aeration of the activated sludge type processes or aerated lagoon will be required. Full power generating capacity may be required when discharge is to critical stream segments to protect downstream

uses identified in R317-2 (Standards for Quality for Waters of the State).

3. Power for Disinfection. Standby power generating capacity shall include the capacity needed for continuous disinfection of wastewater during power outages.

B. Plant Water Supply

1. General. An adequate supply of potable water under pressure should be provided for use in the laboratory and for general cleanliness around the plant. No piping or other connections shall exist in any part of the treatment works which, under any conditions, might cause the contamination of a potable water supply. The chemical quality of the water should be checked for suitability for its intended uses such as in heat exchangers, chlorinators, etc.

2. Direct Connections

a. Potable water from a municipal or separate supply may be used directly at points above grade for hot and cold supplies in lavatory, water closet, laboratory sink (with vacuum breaker), shower, drinking fountain, eye wash fountain, and safety shower; unless local authorities require a positive break at the property line.

b. The applicant must review the requirements stated in R309-112.2 - Distribution System Rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

c. Hot water for any of the above units shall not be taken directly from a boiler or piping used for supplying hot water to a sludge heat exchanger or digester heating unit.

3. Indirect Connections

a. Where a potable water supply is used for any purpose in a plant, a break tank, pressure pump, and pressure tank shall be provided. Water shall be discharged to the break tank through an air gap at least 6 inches (15.2 centimeters) above the maximum flood line or the spill line of the tank, whichever is higher.

b. A sign shall be permanently posted at every hose bib, faucet, hydrant, or sill cock located on the water system beyond the break tank to indicate that the water is not safe for drinking.

4. Separate Potable Water Supply. Where it is not possible to provide potable water from a public water supply, a separate well may be provided. Location and construction of the well shall be in accordance with the requirements of R309, Drinking Water and Sanitation Rules.

5. Separate Non-Potable Water Supply. Where a separate non-potable water supply or plant effluent is to be provided, a break tank will not be necessary, but all system outlets shall be posted with a permanent sign indicating the water is not safe for drinking.

C. Sanitary Facilities. Toilet, shower, lavatory, and locker facilities shall be provided in convenient locations to serve the expected staffing level at the plant.

D. Floor Slope. All floor surfaces shall be sloped adequately to a collection floor drain system.

E. Stairways

1. Stairways shall be installed wherever possible in lieu of ladders. Spiral or winding stairs are permitted only for secondary access where dual means of egress are provided. Stairways shall have slopes between 50 degrees and 30 degrees (preferably nearer the latter) from the horizontal to facilitate carrying samples, tools, etc. Each tread and riser shall be of uniform dimension in each flight. Minimum tread run shall not be less than 8 inches (20.3 centimeters). The sum of the tread run and riser shall not be less than 17 inches (43 centimeters) nor more than 18 inches (46 centimeters). A flight of stairs shall consist of not more than a 12-foot (3.7 meters) continuous rise without a platform.

2. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code, etc., must be reviewed and complied with. Those requirements take precedence over the foregoing requirements, if more stringent, and should be incorporated in the design.

4.7. Flow Measurement. Flow measurement devices, preferably of the primary type (devices which create a hydrodynamic condition that is sensed by the secondary element), shall be provided at the plant to continuously indicate, totalize and record volume of wastewater entering the plant in a unit time.

A. Flumes. Installation of flumes shall be as follows:

1. Flumes with throat widths of less than 6 inches (15 centimeters) shall not be installed. Throat width shall be selected to measure the entire range of anticipated flow rates at all measurement locations.

2. Locations close to turbulent, surging or unbalanced flow, or a poorly distributed velocity pattern shall be avoided. For super-critical upstream flow, a hydraulic jump should be forced to occur in a section upstream of the flume at a distance of at least 30 times maximum upstream operating depth of flume followed by a straight approach section of a length specified in this rule.

3. For flumes with throat width less than half the width of the approach channel, the length of approach channel - straight upstream section - shall be the greater of 20 times the throat width or ten times maximum upstream operating depth in flume.

4. For flumes with throat width greater than half the width of the approach channel, the length of approach channel - straight upstream section - shall be not less than ten times the maximum upstream operating depth in flume.

5. Parshall flumes shall be permitted only in locations where free discharge conditions exists on the downstream side at the average design flow. Submergence must not exceed 60 percent at the maximum design flow.

6. The stilling well, if used, and secondary measuring elements, such as floats, sensors, or gages, shall be protected against extreme weather conditions.

B. Other Flow Measurement Devices. Effluent discharged to receiving waters should be measured using flow measurement devices, such as weirs, sonic or capacitance type, etc.

C. Flow Recorders

1. Clock-wound mechanisms for recording of flow are not permitted.

2. Battery powered flow measurement devices may be permitted at locations where electrical power is not available, and continuous operability of flow measurement devices is demonstrated.

4.8. Safety and Hazardous Chemical Handling. Adequate provision shall be made to effectively protect the operator and visitors from hazards. Local, state and federal safety requirements must be reviewed and complied with. Typical items for consideration are fence, splash guards, hand and guard rails, labeling of containers and process piping, warning signs, protective clothing, first aid equipment, containments, eye-wash fountains and safety showers, dust collection, portable emergency lighting, etc.

4.9. Laboratory.

A. Treatment plants rated in excess of 1 million gallons per day (3,785 cubic meters per day) shall include a laboratory for making the necessary analytical determinations and operating control tests. Otherwise, the applicant shall show availability of services of state-certified laboratories on a continuous contract basis.

B. The laboratory size, bench space, equipment and supplies shall be such that it can perform analytical work for:

1. All self-monitoring parameters required by discharge permits;

2. The process control necessary for good management of each treatment process included in the design; and

3. Industrial waste control or pretreatment programs.

R317-3-5. Screening and Grit Removal.

5.1. Screening Devices. Coarse bar racks or screens shall be used to protect pumps, comminutors, flow measurement devices and other equipment.

5.2. Bar Racks and Screens

A. Location

1. Indoor. Screening devices, installed in a building where other equipment or offices are located, shall be accessible only through a separate outside entrance to protect the operating personnel and the equipment from damage and nuisance caused by gases, odors and potential flooding.

2. Outdoors. Screening devices not installed in enclosures or buildings shall be protected from freezing or other adverse environmental conditions.

B. Access. Screening areas shall be provided with proper work and safe access and egress, proper and emergency lighting, ventilation, and a convenient and safe means for removing the screenings.

C. Design and Installation

1. Bar Spacing. Clear openings between bars should be:

a. not more than 1 inch (2.54 centimeters) for manually cleaned screens; and

b. less than 5/8 of an inch (1.59 centimeters) for mechanically cleaned screens.

2. Bar Slope. Manually cleaned screens, except those for emergency use, should be placed on a slope of 30 to 45 degrees from the horizontal.

3. Approach Velocities. At average design flow conditions, approach velocities should be no less than 1.25 feet per second (38 centimeters per second), to prevent settling; and no greater than three (3) feet per second (91 centimeters per second) to prevent forcing material through the openings.

4. Channels. Dual channels shall be provided and equipped with the necessary gates to isolate flow from any screening unit. Provisions shall also be made to facilitate dewatering each unit. The channel preceding and following the screen shall be shaped to eliminate stranding and settling of solids. Entrance channels should be designed to provide equal and uniform distribution of flow to the screens.

5. Reliability. A minimum of two screens shall be provided. Each screen shall be designed to handle the peak design rate of flow. Where more than two screens are provided, the peak design rate of flow shall be handled with one of the largest units out of service. Where a single mechanical screen handles the peak design rate of flow, then other unit can be a manually cleaned screen.

6. Flow Measurement. The types and locations of flow measurement devices should be selected for reliability and accuracy. The effect of changes in backwater elevations, due to intermittent blinding and cleaning of screens, should be considered in the selection of the locations for flow measurement equipment.

7. Invert. The screen channel invert should be 3.0 to 6.0 inches (7.6-15.2 centimeters) below the invert of the incoming sewer.

D. Safety

1. Railings and Gratings.

a. All screening installations shall be equipped with guard rails and deck grating to insure operator safety.

b. The manually cleaned bar rack shall be accessible for cleaning insuring operator safety.

c. Proper guard rails and enclosures shall be used to protect the operator from moving parts of mechanically operated and cleaned screens. These guard rails and enclosures shall be removable for safe access to maintain and repair mechanically operated and cleaned screens. Catchments shall be provided to prevent dripping of liquids in multi-level installations.

2. Equipment Deactivation and Lockout. Each piece of electrical power mechanical equipment shall be equipped with a positive means of deactivating or locking out or isolating from its power source. Such device shall be located in close proximity to the equipment.

3. Removal of Screenings. The design shall provide for mechanical conveying or lifting systems for safe transport of screenings from a subgrade installation to a collection point on grade.

E. Power Control Systems

1. Timing Devices. All mechanical units which are operated by timing devices shall be provided with auxiliary override controls which will set the cleaning mechanism in operation at a preset high water elevation or water differential across the screen.

2. Electrical Fixtures and Controls. Electrical fixtures and controls in screening areas where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class I, Group D, Division 1 locations.

3. Manual Override. Automatic controls shall be supplemented with a manual override.

F. Disposal of Screenings

1. Facilities shall be provided for removal, handling, storage, and disposal of screenings in a sanitary manner. Separate grinding of screenings and return to the sewage flow is unacceptable. Manually cleaned screening facilities should include an accessible platform from which the operator may rake screenings easily and safely. Suitable drainage facilities shall be provided for both the platform and the storage areas.

2. Screenings may be landfilled. The ultimate disposal of screenings shall conform to and comply with the requirements for the ultimate disposal of residues or sludge management plan.

5.3. Comminutors

A. General. Comminutors may be used in plants, excepting aerated or facultative or total containment lagoons, where mechanically cleaned bar screens are not used.

B. Design Considerations

1. Location. Comminutors should be located downstream of bar screen and any grit removal equipment.

2. Size. Comminutor capacity shall be adequate to handle the peak design rate of flow.

3. Installation.

a. A comminutor bypass channel, with manually cleaned bar screen, shall be provided. The use of the bypass channel should be automatic at depths of flow exceeding the design capacity of the comminutor. The bypass channel should be able to pass the peak design rate of flow when the comminutor channel is out of service.

b. Each comminutor that is not preceded by grit removal equipment should be protected by a 6-inch (15.2 centimeters) deep easily cleaned gravel trap.

PC Maintenance. Gates shall be provided for isolation of comminutor, comminutor channel including bypass channel for draining, repairs and maintenance. Provisions shall be made to facilitate servicing of units in place and removing units from their location for servicing.

5. Electrical Power Controls and Motors. Electrical equipment in comminutor chambers where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations. Motors in areas not governed by this requirement may need protection against accidental submergence.

5.4. Grit Removal Facilities

A. General. Grit removal facilities shall be provided for all mechanical treatment plants. Pumps, comminutors, and other mechanical equipment preceding grit removal, shall be protected from the damaging effects of grit. Storage capacity shall be provided in treatment units where grit is likely to accumulate.

B. Location. Grit removal facilities should be located ahead of pumps and comminuting devices. Coarse bar racks should be placed ahead of grit removal facilities.

C. Enclosed Facilities

1. Ventilation. Uncontaminated air shall be introduced continuously at a minimum rate of 12 air changes per hour, or intermittently at a minimum rate of 30 air changes per hour. Odor control facilities are recommended.

2. Access. Grit removal facilities shall be provided with proper and safe access, and egress from equipment and facilities.

3. Electrical Work. All electrical work in enclosed grit removal areas where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations.

D. Outdoor Facilities. Grit removal facilities located outside the buildings shall be protected from freezing, and other adverse environmental conditions.

E. Type and Number of Units

1. Number of Units. For plants treating:

a. more than 1 million gallons per day rate of flow (3,785 cubic meters per day), two mechanically cleaned grit removal units shall be installed in a parallel configuration. Each grit channel shall be designed to handle the peak design rate of flow.

b. less than 1 million gallons per day rate of flow (3,785 cubic meters per day), a single manually cleaned or mechanically cleaned grit chamber with a bypass channel shall be provided.

2. Other types. When arrangements other than channel-type of grit removal is considered, equipment for agitation, air supply, grit collection, grit removal, and grit washing shall be provided with controls for handling variations in rates of flow, and providing operating flexibility.

F. Design Factors

1. General. The designed effectiveness of a grit removal system shall be commensurate with the requirements of the subsequent process units.

2. Inlet Configuration. Inlet turbulence shall be minimized. The inlet flow direction must be parallel to the induced roll direction within aerated grit chambers.

3. Velocity and Detention Time.

a. Horizontal Channel-type Grit Chambers.

(1) Velocity of flow through a channel-type chamber shall be controlled such that it is not less than one foot per second (30 centimeters per second) during normal variations in flow.

(2) The detention time shall be based on the size of particle to be removed but not less than 20 seconds at the maximum design flow. Velocity and detention time in the channel shall be regulated by installation of control devices such as proportional flow, Sutro weirs, etc.

b. Aerated grit chambers.

(1) The velocity of flow through an aerated grit chamber shall not be less than 1 foot per second (30 centimeters per second) during normal variations in flow, in the direction of induced roll.

(2) A minimum detention time of two to five minutes at the maximum design flow shall be provided. Rate of aeration shall not be less than 4 cubic feet per minute per lineal foot (1.5 liters per second per meter). Outlet weir shall be provided parallel to the direction of induced roll.

c. Square grit chambers. Detention time and overflow rate for square grit chambers shall be based on the size of particles intended to be removed. Overflow rate should not exceed 40,000 gallons per day per square foot of the chamber area (1,600 cubic meters per day per square meter).

4. Grit Washing. Grit should be washed before the disposal.

5. Drains. Provision shall be made for to adequately bypass, isolate and dewater each grit removal unit for maintenance.

6. Water. An adequate supply of service or non-potable plant water under pressure shall be provided for cleanup.

G. Grit Handling.

1. Mechanical equipment for hoisting or transporting grit to ground level shall be provided in grit removal facilities located in deep pits. Impervious, non-slip, working surfaces with adequate drainage shall be provided for grit handling areas. Grit transporting facilities shall be provided with protection against freezing and loss of material.

2. Grit may be landfilled. The ultimate disposal of grit shall conform to and comply with the requirements for the ultimate disposal of residues or sludge management plan.

R317-3-6. Settling.

6.1. General Considerations

A. Number of Units. Multiple units capable of independent operation shall be provided in all plants where the design rate of flow exceed 1 million gallons per day (3,785 cubic meters per day). Plants where the design rate of flow is less than one (1) million gallons per day (3,785 cubic meters per day), shall include other provisions to assure continuity of treatment.

B. Arrangement. Settling tanks shall be arranged for optimum site utilization, and shall be consistent with the hydraulic head requirements for other ancillary units.

C. Flow Distribution. Effective flow measurement devices and control appurtenances (e.g. valves, gates, splitter, boxes, etc.) should be provided to permit proper proportioning of flow to each unit.

D. Tank Configuration. The selection of tank size and shape, and inlet and outlet type and location shall be based on the site and flow patterns.

6.2. Design Considerations

A. Dimensions.

1. The minimum length of flow from inlet to outlet should not be less than be 10 feet (3 meters) unless special provisions are made to prevent short circuiting. The sidewater depth for primary clarifiers shall be not less than 8 feet (2.4 meters).

2. Clarifiers following an activated sludge process shall have sidewater depths of at least 12 feet (3.7 meters) to provide adequate separation zone between the sludge blanket and the overflow weirs.

3. Clarifiers following fixed film reactors shall have sidewater depth of at least 8 feet (2.4 meters).

B. Surface Loading (Overflow) Rates

1. Primary Settling Tanks

a. Surface loading or overflow rates at the average design rate of flow for primary tanks shall not exceed:

(1) 600 gallons per day per square foot (24 cubic meters per square meter per day) for plants treating at the rate of flow less than 1 million gallons per day (3,785 cubic meter per day), or

(2) 1,000 gallons per day per square foot (41 cubic meters per square meter per day) for plants treating at the rate of flow more than 1 million gallons per day (3,785 cubic meter per day).

b. For primary settling, expected influent BOD_5 removal and surface loading is as shown by the relationship: E = (41.5 - (0.01 x Surface loading at average design Q)) where, E = efficiency, percent, and surface loading less than or equal to 2,000 gallons per day per square foot (82 cubic meters per square meter per day). However, anticipated higher BOD_5 removal than the one predicted using above relationship for sewage or sewage containing appreciable quantities of industrial wastes (or chemical additions to be used), shall be validated by plant performance data.

2. Intermediate Settling Tanks. Surface loading or overflow rates for intermediate settling tanks following fixed film reactor processes shall not exceed 1,000 gallons per day per square foot (41 cubic meters per square meter per day) at the average design rate of flow.

3. Final Settling Tanks

a. Settling tests should be conducted wherever a pilot

study of biological treatment is warranted by unusual waste characteristics or treatment requirements.

b. The applicant will conduct pilot testing where proposed loadings go beyond the limits set forth in this section.

c. Surface loading or overflow rates for settling tanks following fixed film processes shall not exceed 800 gallons per day per square foot (33 cubic meters per square meter per day) at the average design rate of flow.

d. Settling tanks following activated sludge processes must be designed to meet thickening as well as solids separation requirements. Surface loading or overflow, and weir overflow rates must be adjusted for the various processes to minimize the problems with sludge loadings, density currents, inlet hydraulic turbulence, and occasional poor sludge settleability. The high rate of recirculation of return sludge from the final settling tanks to the aeration or reaeration tanks requires careful consideration of above factors. The hydraulic design of intermediate and final settling tanks following the activated sludge process shall be based upon the average design rate of flow excluding activated sludge return flow as shown in Table R317-3-6.2(B)(3)(d).

C. Inlet Structures. Inlets should be designed to dissipate the inlet velocity and to distribute the flow equally both horizontally and vertically and to prevent short circuiting. Channels should be designed to maintain a velocity of at least one foot per second (0.3 meter per second) at the minimum design flow. Corner pockets and dead ends should be eliminated and corner fillets or channeling used where necessary. Provisions shall be made for elimination or removal of floating materials in inlet structures.

D. Effluent Overflow Weirs

1. General. Effluent overflow weirs shall be adjustable for leveling.

2. Location. Effluent overflow weirs shall be located to optimize actual hydraulic detention time, and minimize short circuiting.

3. Design Rates. Weir loadings shall not exceed 10,000 gallons per day per lineal foot (124 cubic meters per meter per day) for plants treating the average design rate of flow of one (1) million gallons per day (3,785 cubic meters per day) or less. Higher weir loadings may be used for plants designed for larger average flows, but shall not exceed 15,000 gallons per day per lineal foot (186 cubic meters per meter per day). If pumping is required, weir loadings must be related to pump delivery rates to avoid short circuiting.

4. Weir Troughs. Weir troughs shall be designed to prevent submergence at the maximum design rate of flow (peak daily flow), and to maintain a velocity of at least one foot per second (0.3 meter per second) at one-half of the average design rate of flow. Submergence may be permitted at the maximum design rate of flow (peak daily flow) with one unit out of service.

E. Submerged Surfaces. The tops of troughs, beams, and similar submerged construction elements shall have a minimum slope of 1.4 vertical to 1 horizontal; the underside of such elements should have a slope of 1 to 1 to prevent the accumulation of scum and solids.

F. Unit Dewatering. The bypass design shall provide for redistribution of the plant flow to the remaining units in operation.

G. Freeboard. Walls of settling tanks shall extend at least 6 inches (15 centimeters) above the surrounding ground surface and shall provide not less than 12 inches (30 centimeters) freeboard. Additional freeboard or the use of wind screens should be provided where larger settling tanks are subject to high velocity wind currents that would cause tank surface waves and inhibit effective scum removal.

6.3. Sludge and Scum Removal

A. Scum Removal. Effective scum collection and removal facilities, including baffling, shall be provided for primary, intermediate and secondary settling tanks. The unusual characteristics of scum which may adversely affect pumping, piping, sludge handling and disposal, should be recognized in design. Provisions may be made for the discharge of scum with the sludge; however, other special provisions for disposal may be necessary.

B. Sludge Removal. Sludge collection and withdrawal facilities shall be designed to assure rapid removal of the sludge. Suction withdrawal of sludge from the tank floor should be provided for activated sludge plants designed for reduction of the nitrogenous oxygen demand.

1. Sludge Hopper. When scrapers are used to move sludge into a discharge hopper, the minimum slope of the side walls shall be 1.7 vertical to 1 horizontal. Hopper wall surfaces should be made smooth with rounded corners to aid in sludge removal. Hopper bottoms shall have a maximum dimension of two feet (0.6 meter). Deep sludge hoppers for sludge thickening are not acceptable.

2. Sludge Removal Piping. Each hopper shall have an individually valved sludge withdrawal line at least six inches (15 centimeters) in diameter. The static head available for withdrawal of sludge shall be 30 inches (76 centimeters) or greater, as necessary to maintain a three foot per second (0.91 meter per second) velocity in the withdrawal pipe. Clearance between the end of the withdrawal line and the hopper walls shall be sufficient to prevent bridging of the sludge. Adequate provisions shall be made for rodding or back-flushing individual pipe runs for activated sludge secondary clarifiers except for oxidation ditch clarifiers. Piping shall also be provided to return waste sludge to primary clarifiers.

3. Sludge Removal Control. Sludge wells shall be provided with telescoping valves or other equipment for viewing, sampling and controlling the rate of sludge withdrawal. The use of sight glass and sampling valves may be appropriate. A means of measuring the sludge removal rate shall be provided. Air lift type of sludge removal must not be used for removal of primary sludges. Sludge pump motor control systems shall include time clocks and valve controls for regulating the duration and sequencing of sludge removal.

6.4. Protective and Service Facilities

A. Operator Protection. All settling tanks shall be equipped to provide safe working conditions for operators. Such features shall include machinery covers, life lines, stairways, walkways, handrails and slip resistant surfaces.

B. Mechanical Maintenance Access. The design shall provide for convenient and safe access to routine maintenance items such as gear boxes, scum removal mechanisms, baffles, weirs, inlet stilling baffle area, sludge and scum pumps, and effluent channels.

C. Electrical Fixtures and Controls. Electrical fixtures and controls in enclosed settling basins shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations. The fixtures and controls shall be located so as to provide convenient and safe access for operation and maintenance. Walkways, bridge area and area around settling tanks shall be illuminated with area lighting for operating personnel safety.

R317-3-7. Biological Treatment.

7.1. Trickling Filters

A. General. Trickling filters shall be preceded by effective settling tanks equipped with scum and grease collecting devices, or other suitable pretreatment facilities.

B. Hydraulics

1. Distribution. The sewage may be distributed over the filter by rotary distributors or other suitable devices which will ensure uniform wastewater distribution to the surface area. Uniform hydraulic distribution of sewage on the filters is required.

2. For reaction type distributors, a minimum head of 24 inches (61 centimeters) between low water level in the siphon chamber and center of the arms is required. Similar allowance in design shall be provided for added pumping head requirements where pumping to the reaction type distributor is used. The applicant should evaluate other types of drivers and drives.

3. A minimum clearance of 6 inches (15 centimeters) between media and distributor arms shall be provided. Larger clearance than 6 inches (15 centimeters) must be provided where ice buildup may occur.

C. Wastewater Application. Application of the sewage shall be continuous. The piping system shall be designed for recirculation. The design must provide for routine flushing of filters by heavy dosing at intermittent intervals.

D. Piping System. The piping system, including dosing equipment and distributor, shall be designed to provide capacity for the peak design rate of flow, including recirculation.

E. Media

1. Quality

a. The media may be crushed rock, slag, or specially manufactured material. The media shall be durable, resistant to spalling or flaking and insoluble in sewage. The top 18 inches (46 centimeters) shall have a loss by the 20-cycle, sodium sulfate soundness test of not more than 10 percent. The balance is to pass a ten-cycle test using the same criteria. Slag media shall be free from iron.

b. Manufactured media shall be resistant to ultraviolet degradation, disintegration, erosion, aging, all common acids and alkalies, organic compounds, and fungus and biological attack. Such media shall be structurally capable of supporting a man's weight or a suitable access walkway shall be provided to allow for distributor maintenance.

2. Depth. The filter design shall provide for a depth of:

a. not less than 5 feet (1.5 meters) above the underdrains, but not more than 10 feet (3 meters) when rock or slag media is used in the filters.

b. not less than 10 feet (3 meters) above the underdrains to provide adequate contact time with the wastewater, but not more than 30 feet (9 meters) unless additional structural construction and aeration are provided, when manufactured media is used in the filters.

3. Size and Grading of Media

a. Rock, Slag and Similar Media

(1) Rock, slag, and similar media shall not contain more than 5 percent by weight of pieces whose longest dimension is three times the least dimension.

(2) Media shall be free from thin, elongated and flat pieces, dust, clay, sand or fine material and shall conform to the size and grading when mechanically graded over vibrating screens with square openings, as shown in Table R317-3-7.1(E)(3(a)(2).

b. Manufactured Media. The applicant must evaluate suitability of manufactured media on the basis of experience with installations handling similar wastes and loadings.

c. Handling and Placing of Media. Material delivered to the filter site shall be stored on wood-planked or other approved clean, hard-surfaced areas. All material shall be rehandled at the filter site and no material shall be dumped directly into the filter. Crushed rock, slag and similar media shall be washed and rescreened or forked at the filter site to remove all fines. Such material shall be placed by hand to a depth of 12 inches (30 centimeters) above the tile underdrains. The remainder of material may be placed by means of belt conveyors or equally effective methods approved by the design engineer. All material shall be carefully placed so as not to damage the underdrains. Manufactured media shall be handled and placed as approved by the engineer. Trucks, tractors, and other heavy equipment shall not be driven over the filter during or after construction.

F. Underdrain System

1. Arrangement. Underdrains with semicircular inverts or equivalent should be provided and the underdrainage system shall cover the entire floor of the filter. Inlet openings into the underdrains shall have an unsubmerged gross combined area equal to at least 15 percent of the surface area of the filter.

2. Hydraulic Capacity and Ventilation.

a. The underdrains shall have a minimum slope of 1 percent. Effluent channels shall be designed to produce a minimum velocity of two (2) feet per second (0.61 meters per second) at average daily rates of application to the filter.

b. The underdrainage system, effluent channels, and effluent pipe shall be designed to permit a free passage of air preventing septicity within the filter. The size of drains, channels, and pipe should be such that not more than 50 percent of their cross-sectional area will be submerged under the design peak hydraulic loading, including proposed or possible future recirculated flows. Forced air ventilation must be provided for deep or covered filters using manufactured media. The design of filters should be compatible for the installation of odor control equipment such as covers, forced air ventilation, scrubber, etc., as a retrofit.

3. Flushing. The design should include means for flushing of the underdrains. In small filters, use of a peripheral head channel with vertical vents is acceptable for flushing purposes. Means or facilities of inspection of underdrainage should be provided.

G. Special Features

1. Flooding. Appropriate valves, sluice gates, or other structures shall be provided to enable flooding of filters comprised of rock or slag media.

2. Freeboard. A freeboard of not less than 4 feet (1.2 meters) should be provided for tall filters using manufactured media, to maximize the containment of windblown spray.

3. Maintenance. All distribution devices, underdrains, channels, and pipes shall be installed so that they may be properly maintained, flushed or drained.

4. Freeze Protection. When climatic conditions are expected to result in operational problems due to cold temperatures, the filters may be covered for protection against freezing; maintaining operation and treatment efficiencies.

5. Recirculation. The piping and pumping systems shall be designed for recirculation rates as required to achieve sufficient wetting of biofilm and the design efficiency.

6. Recirculation Measurement. Recirculation rate to the filters shall be measured using flow measurement and recording devices. Time lapse meters and pump head recording devices are acceptable for facilities treating less than 1 million gallons per day (3,785 cubic meters per day).

H. Rotary Distributor Seals. Mercury seals are not permitted. The design of the distributor support septum shall provide for convenient and easy seal replacement to assure continuity of operation.

I. Multi-Stage Filters. The foregoing standards in this rule also apply to all multi-stage filters.

J. Unit Sizing

1. Required volumes of rock or slag media filters shall be based upon the following equations: For Single or First stage of Trickling Filter: $E = 100 - ((100 / (3 + 2 (R/I))) + (0.4 x (W / V) - 10))$. For Second stage of Trickling Filter: $E = 100 x ((1 + (R_2 / I)) / (2 + (R_2 / I)))$ where, E = Efficiency, percent R = recirculated flow through trickling filter, mgd I = raw sewage flow, mgd W = pounds of BOD_5 per day in raw sewage V = volume of filter media in 1000 cubic feet R_2 = recirculated flow through second-stage trickling filter, mgd.

2. The required volume of media may be determined by pilot testing or use of any of the various empirical design equations that have been verified through actual full scale experience. Such calculations must be submitted if pilot testing

is not utilized. Pilot testing is recommended to verify performance predictions based upon the various design equations, particularly when significant amounts of industrial wastes are present.

3. Expected performance of filters packed with manufactured media shall be determined from documented full scale experience on similar installations or through actual use of a pilot plant on site.

K. Nitrification

1. Trickling filters may be used for nitrification. The design should be based as shown in Table R317-3-7.1(K)(1).

2. Nitrification is affected by variations in flow, loadings and temperature, and other factors. Therefore, the applicant must conduct pilot studies before developing the design criteria.

L. Design Safety Factors. Trickling filters are affected by diurnal load conditions. The volume of media determined from either pilot plant studies or use of acceptable design equations shall be based upon organic loading at the maximum design rate of flow rather than the average design rate of flow.

7.2. Activated Sludge

A. General. The activated sludge process and its several modifications may be used to accomplish varied degrees of removal of suspended solids, and reduction of carbonaceous and nitrogenous oxygen demand. The degree and consistency of treatment required, type of waste to be treated, proposed plant size, anticipated degree of operation and maintenance, and operating and capital costs determine the choice of the process to be used. The design shall provide for flexibility in operation. Plants over 1 million gallons per day (3,785 cubic meters per day) shall be designed to facilitate easy conversion to various operational modes. In severe climates, protection against freezing shall be provided to ensure continuity of operation and performance.

B. Aeration

1. Capacities and Permissible Loadings

a. The design of the aeration tank for any particular adaptation of the process shall be based on full scale experience at the plants receiving wastewater of similar characteristics under similar climatic conditions, pilot plant studies, or calculations based on process kinetics parameters reported in technical literature. The size of treatment plant, diurnal load variations, degree of treatment required, temperature, pH, and reactor dissolved oxygen when designing for nitrification, influence the design. Calculations using values differing substantially from those in the table shown below must reference actual operational data.

b. The applicant must substantiate capability of the aeration and clarification systems in the processes using mixed liquor suspended solids levels greater than 5,000 milligrams per liter.

c. The applicant shall use the values shown in Table R317-3-7.2(B)(1)(c) to determine the aeration tank capacities and permissible loadings for the several adaptations of the processes, when process design calculations are not submitted. These values are based on the average design rate of flow, and apply to plants receiving peak to average diurnal load ratios ranging from about 2:1 to 4:1.

2. Arrangement of Aeration Tanks

a. Dimensions. Effective mixing and utilization of air must be the basis of dimensions of each independent mixed liquor aeration tank or return sludge reaeration tank. Liquid depths should not be less than 10 feet (3 meters) or more than 30 feet (9 meters) unless the applicant justifies the need for shallower or deeper tanks.

b. Short-circuiting. The shape of the tank and the installation of aeration equipment should provide for positive control of short-circuiting through the aeration tank.

c. Number of Units. Total aeration tank volume shall be divided among two or more units, capable of independent operation, to meet applicable effluent limitations and reliability guidelines.

d. Inlets and Outlets. Inlets and outlets for each aeration tank unit shall be suitably equipped with valves, gates, stop plates, weirs, or other devices to permit controlling the flow to any unit and to maintain reasonable constant liquid level. The hydraulic properties of the system shall permit the maximum instantaneous hydraulic load to be carried with any single aeration tank unit out of service.

e. Conduits. Channels and pipes carrying liquids with solids in suspension shall be designed to maintain self-cleaning velocities or shall be agitated to keep such solids in suspension at all rates of flow within the design limits. Drains shall be installed in the aeration tank to drain segments or channels which are not being used due to alternate flow patterns.

f. Freeboard. All aeration tanks should have a freeboard of not less than 18 inches (46 centimeters). Additional freeboard or windbreak may be necessary to protect against freezing or windblown spray.

3. Aeration Requirements

a. Oxygen requirements must be calculated based on factors such as, maximum organic loading, degree of treatment, level of suspended solids concentration (mixed liquor) to be maintained, and uniformly maintaining a minimum dissolved oxygen concentration in the aeration tank, at all times, of two milligrams per liter.

b. When pilot plant or experimental data on oxygenation requirements are not available, the design oxygen requirements shall be calculated on the basis of:

(1) 1.2 pounds 0_2 per pound of maximum BOD_5 applied to the aeration tanks (1.2 kilograms 0_2 per kilogram of maximum BOD_5), for carbonaceous BOD_5 removal in all activated sludge processes with the exception of the extended aeration process,

(2) 2 pounds 0_2 per pound of maximum BOD_5 applied to the aeration tanks (two kilograms 0_2 per kilogram of maximum BOD_5) for carbonaceous BOD_5 removal in the extended aeration process,

(3) 4.6 pounds 0_2 per pound of maximum total kjeldahl nitrogen (TKN) applied to the aeration tanks (1.2 kilograms 0_2 per kilogram of maximum TKN), for oxidizing ammonia in the case of nitrification, and

(4) oxygen demand due to the high concentrations of BOD_5 and TKN associated with recycle flows such as, digester supernatant, heat treatment supernatant, belt filter pressate, vacuum filtrate, elutriates, etc.

c. Oxygen utilization should be maximized per unit power input. The aeration system should be designed to match the diurnal organic load variation while economizing on power input.

4. Diffused Air Systems

a. The design of the diffused air system to provide the oxygen requirements shall be done using data derived from pilot testing or an empirical approach.

b. Air requirements for a diffused air system may be determined by use of any of the recognized equations incorporating such factors as:

(1) tank depth;

(2) alpha factor of waste;

(3) beta factor of waste;

(4) certified aeration device transfer efficiency;

(5) minimum aeration tank dissolved oxygen concentrations;

(6) critical wastewater temperature; and

(7) altitude of plant.

c. In the absence of experimentally determined alpha and beta factors by an independent laboratory for the manufacturer or at the site, wastewater transfer efficiency shall be assumed to be 50 percent of clean water efficiency for plants treating

primarily (90 percent or greater) domestic sewage. Treatment plants where the waste contains higher percentages of industrial wastes shall use a correspondingly lower percentage of clean water efficiency and shall submit calculations to justify such a percentage.

d. The design air requirements shall be calculated on the basis of:

(1) 1,500 cubic feet per pound of maximum BOD_5 applied to the aeration tanks (94 cubic meters per kilogram of maximum BOD_5), for carbonaceous BOD_5 removal in all activated sludge processes with the exception of the extended aeration process,

(2) 2,000 cubic feet per pound of maximum BOD_5 applied to the aeration tanks (125 cubic meters per kilogram of maximum BOD_5) for carbonaceous BOD_5 removal in the extended aeration process,

(3) 5800 cubic feet per pound of maximum total kjeldahl nitrogen (TKN) applied to the aeration tanks (360 cubic meters per kilogram of maximum TKN), for oxidizing ammonia in the case of nitrification,

(4) corresponding air quantities for satisfaction of oxygen demand due to the high concentrations of BOD_5 and TKN associated with recycle flows such as, digester supernatant, heat treatment supernatant, belt filter pressate, vacuum filtrate, elutriates, etc., and

(5) air required for channels, pumps, aerobic digesters, or other uses.

e. The capacity of blowers or air compressors, particularly centrifugal blowers, must be calculated on the basis of air intake temperature of 40 degrees Centigrade (104 degrees Fahrenheit) or higher and the less than normal operating pressure. The capacity of drive motor must be calculated on the basis of air intake temperature of -30 degrees Centigrade (-22 degrees Fahrenheit) or less. The design must include means of controlling the rate of air delivery to prevent overheating or damage to the motor.

f. The blowers shall be provided in multiple units, so arranged and in such capacities as to meet the maximum air demand with the single largest unit out of service. The design shall also provide for varying the volume of air delivered in proportion to the load demand of the plant. Aeration equipment shall be easily adjustable in increments and shall maintain solids suspension within these limits.

g. Diffuser systems shall be capable of providing for the maximum design oxygen demand or 200 percent of the average design oxygen demand, whichever is larger. The air diffusion piping and diffuser system shall be capable of delivering normal air requirements with minimal friction losses.

h. Air piping systems should be designed such that total head loss from blower outlet (or silencer outlet where used) to the diffuser inlet does not exceed 0.5 pounds per square inch (0.04 kilogram per square centimeter) at average operating conditions.

i. The spacing of diffusers should be in accordance with the oxygen requirements through the length of the channel or tank, and should be designed to facilitate adjustment of their spacing without major revision to air header piping. Removable diffuser assemblies are recommended to minimize downtime of aeration tanks.

j. Individual assembly units of diffusers shall be equipped with control valves, preferably with indicator markings for throttling, or for complete shutoff. Diffusers in any single assembly shall have substantially uniform pressure loss.

k. Air filters shall be provided in numbers, arrangements, and capacities to furnish, at all times, an air supply sufficiently free from dust to prevent damage to blowers and clogging of the diffuser system used.

5. Mechanical Aeration Systems

a. Oxygen Transfer Performance. The mechanism and drive unit shall be designed for the expected conditions in the aeration tank in terms of the power performance. The mechanical aerator performance shall be verified by certified testing.

b. Design Requirements. The design requirements of a mechanical aeration system shall accomplish the following:

(1) Maintain a minimum of 2.0 milligrams per liter of dissolved oxygen in the mixed liquor at all times throughout the tank or basin;

(2) Maintain all biological solids in suspension;

(3) Meet maximum oxygen demand and maintain process performance with the largest unit out of service; and

(4) Provide for varying the amount of oxygen transferred in proportion to the load demand on the plant.

c. Winter Protection. Due to high heat loss and the nature of spray-induced agitation, the mechanism, as well as subsequent treatment units, shall be protected from freezing where extended cold weather conditions occur.

6. Return Sludge Equipment

a. Return Sludge Rate

(1) The minimum permissible return sludge rate of withdrawal from the final settling tank is a function of the concentration of suspended solids in the mixed liquor entering it, the sludge volume index of these solids, and the length of time these solids are retained in the settling tank. Since undue retention of solids in the final settling tanks may be deleterious to both the aeration and sedimentation phases of the activated sludge process, the rate of sludge return expressed as a percentage of the average design flow of sewage should be between the limits set forth in Table R317-3-7.2(B)(6)(a)(1).

(2) The rate of sludge return shall be varied by means of variable speed motors, drives, or timers (in plants designed for less than one million gallons per day - 3,785 cubic meters per day) to pump sludge at the above rates.

b. Return Sludge Pumps

(1) If motor driven return sludge pumps are used, the maximum return sludge capacity shall be with the largest pump out of service. A positive head should be provided on pump suctions. Pumps should have at least 3 inch (7.6 centimeters) suction and discharge openings.

(2) If air lifts are used for returning sludge from each settling tank hopper, no standby unit is required provided the design of the air lifts are such to facilitate their rapid and easy cleaning and provided standby air lifts are provided. Air lifts should be at least 3 inches (7.6 centimeters) in diameter.

c. Return Sludge Piping. Discharge piping shall not be less than 4 inches (10 centimeters) in diameter, and should be designed to maintain a velocity of not less than two (2) feet per second (0.61 meters per second) when return sludge facilities are operating at normal return sludge rates. Sight glasses, sampling ports and rate of flow controllers for return activated sludge flow from each settling tank hopper shall be provided.

7. Waste Sludge Facilities

a. The design of waste sludge control facilities should be based on a logically developed solids mass balance at the maximum design flow. Otherwise, a maximum capacity of not less than 25 percent of the average design flow shall be provided, and function satisfactorily at rates of 0.5 percent of average sewage flow or a minimum of 10 gallons per minute (0.63 liters per second), whichever is larger.

b. Sight glasses, sampling ports and rate of flow controllers for waste activated sludge flow shall be provided.

c. Waste sludge may be discharged to the concentration or thickening tank, primary settling tank, sludge digestion tank, vacuum filters, other thickening equipment, or any practical combination of these units.

7.3. Flow Measurement. Instrumentation should be provided in all plants for indicating flow rates of raw sewage or primary effluent, return sludge, and air to each tank unit. For plants designed for the average design rate of flow of 1 million

gallons per day (3,785 cubic meters per day) or more, these devices should total, record, and indicate the rate of flow. Where the design provides for all return sludge to be mixed with the raw sewage (or primary effluent) at one location, then the mixed liquor flow rate to each aeration unit should be measured.

7.4. Other Biological Systems. The executive secretary may consider and approve new biological treatment processes with promising applicability in wastewater treatment. The approval will be based on the required engineering data for new process evaluation as provided in this rule.

7.5. Packaged Plants. The executive secretary may consider and approve packaged biological treatment plants only when there are no other and appropriate alternatives for waste treatment. These type of plants shall be designed for handling large flow variations and to meet all requirements contained in this rule. The applicant must consider the need for close attention and competent operating supervision, including routine laboratory control, when proposing a packaged plant.

R317-3-8. Disinfection.

8.1. General

A. All wastewaters containing pathogens or coliform bacteria must be disinfected before discharge to a water course. The disinfection procedures must consider any effect on the natural aquatic habitat and biota of the receiving water course. Effectiveness of disinfection also varies with BOD_5 and suspended solids in the effluent. If chlorination is utilized, it may be necessary to dechlorinate if the residual chlorine level would otherwise impair the receiving water course. The applicant must submit justification to the executive secretary for the determination of the acceptability of any disinfection system other than chlorination or ultraviolet irradiation.

B. If effluent to be discharged meets applicable bacteriologic standards before disinfection, the executive secretary may waive the disinfection process. However, all plants must have an ability to introduce a disinfectant in the effluent with proper reaction time before discharge. An example could be multi-celled (more than three cells) lagoon discharge following extended storage in excess of 150 days.

C. The disinfection method should be selected after due consideration of wastewater flow rates, application rates, demand rates and effects, pH of the wastewater, cost of equipment, availability, maintenance, reliability and safety problems.

D. Chlorine is the most commonly used chemical for wastewater disinfection. The forms most often used are liquid-gaseous chlorine and sodium and calcium hypochlorite. The executive secretary may review and accept other disinfection methods based on the information submitted.

8.2. Design

A. Capacity of System

1. Required disinfection capacity will vary, depending on the uses and points of application of the disinfectant, e.g., prechlorination, post chlorination, odor and process control uses, etc.

2. For disinfection of the wastewater before its discharge to a water course, the disinfection system capacity shall be sufficient to produce an effluent that will meet the coliform bacteria limits specified for that installation at all times. This condition must be attainable when maximum flow rates occur and during emergency conditions. For non-chemical disinfecting systems, an equivalent installed capacity shall be provided. Normal dosage requirements for disinfection will vary with the quality of effluent to be treated.

3. Duplicate disinfection systems shall be provided. Where only two units are installed, each shall be capable of feeding the expected maximum dosage rate.

4. Disinfection system equipment should be provided with necessary changeable parts to permit operation of system at initial anticipated flows at mid-scale on flow meters and other devices. Spare parts shall be provided for all disinfection equipment to replace parts which are subject to wear and breakage. Operation and maintenance data for all equipment shall be furnished.

5. Dosage control based on effluent flow rate should be provided because of the diurnal variations in the disinfectant demand of the wastewater. A residual disinfectant concentration must be maintained to insure the pathogen destruction, and subsequent reactivation, if any.

B. Contact Period

1. For a chlorination system, a minimum contact period is required after a thorough mixing of disinfectant with the effluent. The minimum contact period shall be greater of:

a. 30 minutes at the maximum design rate of flow (peak daily rate of flow) or the maximum pumping rate, or

b. 60 minutes at the average design rate of flow.

2. This contact period shall normally be provided in the contact tank. Contact period in pipeline or outfalls before discharge into a water course, may be credited towards the contact time if the effluent discharge point can be sampled.

C. Contact Chambers

1. The contact chambers must be designed such that:

a. effectiveness of disinfection is maximized;

b. accumulation of solids is minimized;

c. maintenance and cleaning is facilitated; and

d. short circuiting of flow is reduced to a practical minimum by installation of baffles.

2. Two tanks are required for all plants treating more than 1 million gallons per day (3,785 cubic meters per day). Means of removal of solids from the tank bottom shall be provided. Solids and drainage water must be returned to the head end of the plant. Skimming devices should be provided in all contact tanks. Covered tanks must have means of access for maintenance and cleaning.

3. Pipelines and outfall sewers may be acceptable as effective plug-flow contact chambers.

4. The applicant must incorporate all of the above process and design features in devices using other disinfecting methods.

D. Point of Application

1. The design shall provide for application of chlorine or other disinfectants to all fully treated, partially treated, or untreated wastewater discharged from the treatment plant. Other points of application shall be incorporated in the design for process considerations such as prechlorination, odor control, control of sludge bulking, etc. All application points shall be submerged below the wastewater surface.

2. Chlorine shall be positively mixed as rapidly as possible, with a complete mix being effected in three seconds. This may be accomplished by either the use of turbulent flow regime or a mechanical flash mixer.

8.3. Disinfection Methods

A. Chlorination (Liquid or Gaseous Chlorine)

1. Equipment

a. The installed capacity of a chlorine feed system shall be sufficient to provide a dosage of 25 milligrams per liter at the maximum design rate of flow. Procedures recommended by the Chlorine Institute and the Occupational Safety and Health Administration, the US Department of Labor, and succeeding organizations should be carefully followed in handling, installation, operation and maintenance of chlorination equipment. The requirements, procedures and recommendations from these organizations take precedence over the requirements stated herein, if more stringent.

b. Liquid chlorine lines from tank cars to evaporators shall be buried and installed in a conduit and shall not be exposed in below grade spaces. Systems shall be designed for the shortest possible pipe transportation of liquid chlorine. When chlorine cylinders are used, two scales, indicating and recording type,

should be used for weighing the cylinders in use. Each scale should be sized to accommodate the maximum number of cylinders required to deliver chlorine at the maximum chlorine feeding rate. Adequate means for supporting cylinders on the scales should be provided. Scales shall be of corrosion-resistant material.

c. Separate manifolds shall be provided for the bank of cylinders on each scale. The manifolds shall be properly valved so that one bank of cylinders may be replaced while chlorine is being withdrawn from the other bank of cylinders. Provision should be made for automatically changing the withdrawal of chlorine from one bank of cylinders to the second when the chlorine in the first bank of cylinders has been exhausted.

d. Gas chlorinators shall be of the solution feed type. The design capacity of evaporators must correspond to gaseous chlorine demand, where several cylinders or ton containers are manifolded to evaporate sufficient chlorine. Chlorine gas systems and piping should be of vacuum type.

2. Housing and Storage

a. Local, state and federal safety requirements, including fire code, shall be carefully followed in storing and handling of chlorine containers, cylinders or tank cars.

b. Gaseous chlorine and chlorination equipment rooms shall be isolated from other sections of the building by gas-tight partitions. Separation of the chlorine storage room and the chlorination equipment room is required for safety. All doors and rooms containing gas chlorination equipment and rooms used for chlorine gas storage should open only to the outside of the building, and all doors should be equipped with panic hardware and a viewing window. Multiple exits to the outside should be provided for each room in which chlorine gas is stored or used. Rooms housing chlorination equipment should be heated to 70 degrees Fahrenheit (21 degrees Centigrade), but never in excess of normal summer temperatures. Rooms containing chlorine cylinders from which chlorine is being withdrawn should be heated to above 60 degrees Fahrenheit (16 degrees Centigrade), but never above the temperature of the equipment room. Where chlorine containers are stored out of doors, the storage area shall be provided with a canopy. Similar precautions should be taken for tank cars. Also, if containers are stored out of doors, cylinders and containers must be allowed to reach room temperature before being placed in use. Floor drains from chlorine rooms must not be connected to floor drains from other rooms.

c. Chlorine rooms shall be at ground level, and should permit easy access to all equipment. The storage area should be separated from the feed area. Chlorination equipment should be situated as close to the application point as reasonably possible.

3. Ventilation and Heating

a. With chlorination systems, forced, mechanical ventilation shall be installed which will provide one complete air change per minute when the room is occupied.

b. When unoccupied, facilities in the ventilation system may be provided with means to reduce the number of air changes to twenty per hour to conserve energy. Whenever such a two-speed ventilation system is used, adequate provisions shall be made to insure that one complete air change per minute is provided when the room is occupied.

c. The entrance to the air exhaust duct from the room shall be near the floor and the point of discharge shall be so located as not to contaminate the air inlet to any buildings or inhabited areas.

d. Air inlets shall be so located as to provide cross ventilation with air and at such temperature that will not adversely affect the chlorination equipment. The vent hose from the chlorinator shall discharge to the outside atmosphere above grade or to the scrubbing system.

e. Switches for exhaust fans and cylinders shall be kept at essentially room temperature.

f. Chlorine scrubbing systems should be incorporated in the design of handling and storage areas where required by the state or local codes.

4. Ancillary Services

a. Water Supply. An ample supply of water meeting a minimum of secondary effluent quality, R317-1, Definitions and General Requirements, shall be available for operating the chlorinator. All in-plant use of effluent shall be taken from downstream of the sampling point for effluent quality monitoring and permit compliance. Where a booster pump is required, a standby booster pump shall be provided, and standby power shall be available.

b. Other Equipment. All electrical fixtures and drainage conduits in chlorination equipment rooms and chlorine storage rooms shall be gas-tight to prevent the spread of chlorine gas in the event of a leak.

5. Piping and Material. Piping systems should be as simple as possible, specifically selected and manufactured to be suitable for chlorine service, with a minimum number of joints. Piping should be well supported and protected against temperature extremes. Low pressure lines made of hard rubber, saran-lined, rubber-lined, polyethylene, polyvinyl chloride (PVC), or Uscolite materials are satisfactory for wet chlorine or aqueous solutions of chlorine.

6. Reliability. The design of the system must include the necessary provisions that will either prevent failures or allow immediate corrective action to be taken. Standby power, duplicate equipment and water storage shall be incorporated in the design to prevent interruption of feed, water supply and backup to power and equipment failures.

7. Residual Monitoring

a. An indicating and recording type residual chlorine analyzer using accepted test procedures shall be installed to monitor residual chlorine as required in the discharge permit.

b. Where dechlorination is used, residual chlorine analyzers shall be equipped with audible and visual alarms to indicate discharge of chlorine in the effluent.

8. Safety

a. At least two complete sets of respiratory air-pac protection equipment, meeting the requirements of the Occupational Safety and Health Administration (OSHA), shall be available where chlorine gas is handled, and shall be stored at a convenient location, but not inside any room where chlorine is used or stored. Instructions for using the equipment shall be posted near the equipment. The equipment shall, using compressed air, have at least 30-minute capacity, and be compatible with the equipment used by the fire department responsible for the plant.

b. Where ton containers or tank cars are used, a leak repair kit approved by the Chlorine Institute shall be provided. Caustic soda solution reaction tanks for absorbing the contents of leaking ton containers must be provided where such containers are in use. The installation of automatic gas detection and related alarm equipment must be provided.

B. Ultraviolet Irradiation

1. The executive secretary will consider and approve the use of ultraviolet irradiation for disinfection of wastewater treatment plant effluent based on the information submitted. Effectiveness of this system depends upon shallowness of depth or contact volume at the point of application and relative absence of suspended solids.

a. The applicant must submit supporting data describing the proposed system and including such items as contact geometry between the ultraviolet light source and water, reliability, and suitability of the effluent for this process. Designs should be investigated for sound application of the fundamentals of UV disinfection theory.

b. The design shall be based on factors such as, plug-flow hydraulics, intimate contact with the UV light for a sufficient

period, short-circuiting, illumination. Tracer test results are helpful in assessment of hydraulic characteristics.

c. Materials of construction should be consistent with the wastewater and environment.

2. The design of ultraviolet disinfection systems shall be based on on-site testing and the following considerations:

a. Wastewater characteristics. Concentration of total suspended solids (TSS), calcium, magnesium, iron, etc., should be such that UV disinfection is effective. The wastewater should contain low levels of total suspended solids, preferably 20 milligrams per liter or below, and must transmit at least 50 percent of UV light through a wastewater depth of one (1) centimeter.

b. Layout

(1) Adequate space around the UV units to accommodate maintenance activities is required.

(2) Easy removal and replacement of lamps without the use of special tools by one man should be a feature of the equipment design.

(3) The ballasts should be arranged for ready and unhindered access for removal or replacement of any ballast without having a need to remove others.

(4) The layout design must provide adequate floor space for any separate components of the UV system in addition to the UV reactor itself, including requirements for power supply cabinets or cleaning equipment.

(5) Modular design with multiple units to allow uninterrupted service when performing maintenance must be specified.

3. Electrical Requirements

a. power consumption of this process alone should be separately metered.

b. UV lamps and ballasts must be properly matched. The proper matching of lamp and ballast will improve the lamps output and extend its useful life.

c. arrangements for shutting off banks of lamps within a single unit must be provided for lamp replacement or maintenance.

d. power controls should be provided for matching output of lamps with the rate of flow, and system maintenance by the plant staff.

e. minimum electrical standards of construction shall conform to the National Electrical Code, and other applicable codes and standards, consistent with the location or environment surrounding the UV unit and associated equipment.

4. Ventilation. Adequate ventilation to the structure housing the electrical components of the system must be provided to prevent failures from overheating.

5. Cleaning

a. The various means of chemical cleaning available must be evaluated. The evaluation must cover methods required for the unit to be drained; volume of cleansing agent required per cleaning; disposition of spent cleaning solution; manpower requirements to accomplish a cleaning cycle; capital costs of the cleaning and equipment; cleaner cost availability; and special storage and handling needs.

b. The system design must provide for complete draining and easy cleaning.

c. Ultrasonic cleaning must be considered for prevention of biofilm growth on non-illuminated quartz sleeves.

6. Monitoring and Instrumentation

i. Adequate staffing and resources to conduct the data collection and monitoring required for assessing performance must be provided.

ii. Each individual lamp output shall be measured and recorded.

8.4. Dechlorination

A. Sulfur Dioxide (SO_2)

1. Sulfur dioxide is most readily available in liquid (gaseous) form in ton containers similar to chlorine. Approximately, 1 milligram per liter of sulfur dioxide is required to dechlorinate 1 milligram per liter of chlorine residual (free or combined).

2. The dechlorination reaction between sulfur dioxide and both free and combined chlorine is a rapid reaction and requires only a few seconds of contact. The design of sulfur dioxide system must be based on the following considerations:

a. Equipment. Generally sulfur dioxide shall be fed as a gas similar to chlorine gas, as described in R317-3-8. The sulfur dioxide header should be heated to prevent re-liquefaction.

b. Housing and Storage. These requirements are same as to those for chlorine, as described in R317-3-8.

c. Ventilation. These requirements are same as to those for chlorine, as described in R317-3-8.

d. Ancillary Services. These requirements are same as to those for chlorine, as described in R317-3-8.

e. Piping and Material. Pipe material (plastics) inside the sulfonator must be compatible with continuous exposure to sulfur dioxide gas.

f. Reliability. These requirements are same as to those for chlorine, as described in R317-3-8.

g. Residual Monitoring. Control is critical when sulfur dioxide is used as the dechlorinating agent because excess sulfur dioxide consumes excess dissolved oxygen in the wastewater or receiving waters. The dechlorination reaction between sulfur dioxide and both free and combined chlorine is rapid, a few seconds at the most, so sampling can be performed immediately downstream of good mixing. The system should be monitored with a residual chlorine analyzer.

h. The design shall incorporate reaeration of the effluent to be in compliance with the dissolved oxygen requirement, if any, of the discharge permit.

i. Safety

(1) Adequate precautions must be taken for storing sulfur dioxide as it is a potentially hazardous chemical to store.

(2) Provide the same amount of air changes per hour as would be required for chlorine, together with a sulfur dioxide sensing and alarm detector.

B. Other Dechlorinating Agents. The executive secretary may review and approve other methods and chemicals for dechlorination based on the information submitted.

R317-3-9. Sludge Processing and Disposal.

9.1. Design Considerations

A. Process Selection

1. The selection of sludge handling and disposal methods must be based on the following considerations:

a. Energy requirements;

b. Efficiency of equipment for sludge thickening;

c. Complexity and costs of equipment and operations;

d. Staffing requirements;

e. Toxic effects of heavy metals and other substances on sludge stabilization and disposal alternatives;

f. Treatment and disposal of side-stream flows, such as digester and thickener supernatant;

g. Process considerations and good house keeping procedures for minimum waste stream generation;

h. A back-up method of sludge handling and disposal; and

i. The long term effects and regulatory requirements on methods of ultimate sludge disposal.

2. The selected process shall be designed to result in stabilized sludge prior to disposal. Significant reduction of odors, volatile solids and reduction or deactivation of pathogenic organisms can be achieved by chemical, physical, thermal or biological treatment processes; thereby reducing public health hazards and nuisance conditions.

B. Sludge Quantities

1. The sludge treatment system shall be designed to accommodate the quantities of sludge generated through the design period. Individual process sizing shall consider the sludge generation peaking factors appropriate for the size and type of facility, with allowance for: seasonal variations, industrial loads, and type of collection system. Reserve capacity in the form of off-line storage, standby units or use of extended hours of operation should be considered to handle peak sludge loads.

2. In plants treating less than one million gallons per day (3,785 cubic meters per day), sludge dewatering equipment may operate for less than 35 hours per week. Sludge processing equipment must be designed to operate efficiently over the range of sludge characteristics expected from the preceding unit process. The design engineer shall submit to the executive secretary, copies of design sizing calculations and relevant information to include:

a. average and maximum sludge quantities;

b. number and size of units;

c. equipment characteristics, conditioning chemical requirements and basic sizing parameters;

d. hours of operation;

e. expected capture efficiency;

f. expected percent solids yield.

C. Recycle loads. The sludge system as well as the liquid handling system shall be designed to take into consideration the recycle BOD5, suspended solids, nitrogen and phosphorus from the solids processing units. The magnitude of such recycle loads and resulting additional sludge will normally range from 5 to 30 percent of the influent loads. Solids balances to account for the additional solids must be calculated.

D. Sludge Storage

1. Design Considerations

a. When the plant design, except for the lagoons, does not include aerobic or anaerobic digesters, or gravity thickeners, etc., a minimum sludge storage for the entire sludge production over a two week period must be provided.

b. In-line storage by increasing mixed liquor solids concentration in aeration tanks or increasing retention in settling tanks is not permitted.

c. Aerated off-line sludge storage of not less than seven days shall be provided for oxidation ditch type activated sludge plants without a sludge digestion process.

2. Equipment Design. The sludge storage system should be equipped with mixing devices to prevent separation of solids and provide a more uniform feed to dewatering devices. Provision for adding lime, chlorine or air to prevent septicity and resulting odors is desirable. Decanting systems to provide thicker solids and flushing water to clean out tankage are necessary. Covering and odor control devices should be provided to minimize nuisance conditions.

9.2. Sludge Pumps and Piping

A. Design Basis

1. Pump Capacity. Capacity shall be adequate to cover the full range of solid concentrations and sludge production. Variable speed or other rate control systems should be provided for all sludge pumps. Maximum operating pressure should be calculated to account for the high friction factor when pumping thixotropic sludges in low velocity laminar ranges.

2. Duplicate Units. Duplicate units shall be provided where failure of one unit would seriously hamper plant operation. Pump suction and discharge manifolds should be interconnected so that one pump discharge can be used to backflush other suction piping.

3. Minimum Head. A minimum positive static head of 24 inches (61 cm) shall be provided at the suction side of centrifugal type pumps and is desirable for all types of sludge pumps. Maximum suction lift should not exceed 10 feet (3 meters) for plunger or diaphragm pumps.

4. Piping

a. Size. Sludge withdrawal piping shall have a minimum diameter of 8 inches (20 cm) for gravity withdrawal and 6 inches (15 cm) for pump suction and discharge lines. Where withdrawal is by gravity, available head shall be adequate to provide sufficient velocity in pipe; thereby preventing solids deposition in pipe.

b. Slope. Gravity flow piping should be laid on a uniform grade and alignment. The slope of gravity discharge lines should not be less than 3 percent.

c. Lining. Scum and primary sludge conveying piping should be lined with a low roughness material such as, glass lining, to reduce friction and to aid in cleaning and maintenance.

B. Equipment Features

1. Plunger type, screw feed type, rotary lobe type, recessed-impeller centrifugal type, progressive cavity type or other types of pumps with demonstrated solids handling capability shall be provided for handling raw sludge. Plunger pump backup for centrifugal pumps is recommended. The abrasive nature of sludges, especially those containing grit, must be considered in the selection of pump type and materials of construction.

2. Sludge grinders should be used where downstream process equipment, such as frame and plate presses, centrifuges, heat exchangers, sludge mixing devices or progressive cavity pumps, is susceptible to rag or trash build-up.

3. Valves. The piping system shall be equipped with isolation valves to allow for repairs and replacement of equipment or metering devices.

4. Piping Layout. Provisions should be made for cleaning, draining and flushing sludge piping. Flanges tees and crosses and cleanouts to allow rodding of suction line are desirable. Provision for back flushing with positive displacement pump discharge is desirable. Provision for cleaning by hot water, steam injection, in-line pigging or chemical degreasing should be considered in long lines containing raw sludge or scum.

C. Control Devices

1. Flow meters should be provided on all process and ancillary lines such as feed, withdrawal, gas, transfer, recirculation, hot water etc. Provision should be made for equipment isolation, cleaning and calibrating.

2. Sludge pumps used on intermittent withdrawal service should be equipped with variable timer equipment.

3. Quick-closing sampling valves shall be installed at the sludge pump, unless sludge sampling is provided separately elsewhere. The size of the valve and piping shall be at least 1 1/2 inches in diameter (3.8 centimeters).

9.3. Sludge Thickeners

1. The design of thickeners (gravity, dissolved-air flotation, centrifuge, and others) should consider the type and concentration of sludge, the sludge stabilization processes, the method of ultimate sludge disposal, chemical needs, and the cost of operation. The pumping rate and piping of the concentrated sludge should be selected such that anaerobic conditions are prevented.

2. No credit towards sludge storage or digestion, if any, in thickeners shall be permitted.

A. Gravity Thickening

1. Design Basis

a. Typical loading rates and resulting solids concentration for gravity thickening are as shown in Table R317-3-9.3(A)(1)(a).

b. Equipment and piping must be designed to deliver sufficient dilution water to gravity thickeners. Flow rate of dilution water shall be measured and recorded. Hydraulic loading to produce overflow rates of 400 to 800 gallons per day per square foot (16-33 cubic meter per day per square meter) shall be maintained to prevent septicity.

2. Equipment Features

a. Heavy duty scrapers capable of withstanding extra heavy torque loads should be provided.

b. Sidewater depths of 10-14 feet (3-4.2 meters) are recommended.

c. Ability to add chlorine solution should be provided to prevent septicity.

d. Tank covers and odor control systems should be considered depending on adjacent land use.

B. Co-Settling. Trickling filter or activated sludge may be returned to primary clarifiers for co-settling. If this method is utilized:

1. Peak design overflow rates for the primary clarifier shall not exceed 1,500 gallons per day per square foot (61 cubic meters per day per square meter), including recirculated sludge flow, and

2. Minimum sidewater depth in the primary clarifier must not be less than 12 feet (3.7 meters).

9.4. Anaerobic Digestion

A. Design Basis

1. The anaerobic digestion system shall provide for active digestion, supernatant separation, sludge concentration and storage. Heating and gas collection systems are required. Mixing systems for primary digesters shall be provided, and are recommended for secondary digesters.

2. Multiple digestion units shall be provided in all plants designed for more than 1 million gallons per day (3,7854 cubic meter per day) rate of flow. For plants designed for less than one million gallons per day (3,785 cubic meters per day), alternative methods of sludge stabilization and emergency storage must be available if only one unit is available.

3. The total digestion tank capacity should be determined by rational calculations based upon the following factors:

a. sludge characteristics - volume and percent solids,

b. the temperature to be maintained in the digesters,

c. the degree and extent of mixing in the digesters, and

d. the degree of volatile solids reduction desired.

4. Calculations shall be submitted to justify the basis of design. Otherwise, the following assumptions shall be used:

a. sludge characteristics - domestic wastewater sludge volume generated as shown in Table R317-3-9.4(A)(4)(a).

b. the temperature to be maintained in the digesters: 90 to 100 degrees Fahrenheit (32-38 degrees Centigrade).

c. the degree and extent of mixing in the digesters: 40 horsepower per million gallons (8 watts per cubic meter).

d. volatile solids in digested sludge: 50 percent.

5. Completely-mixed systems, mixed at an intensity such that digester contents are completely turned over every 30 minutes, may be loaded at a rate up to 120 pounds of volatile solids per 1,000 cubic feet of volume per day (1.92 kilograms per cubic meter per day) in the active digestion units. When grit removal facilities are not provided, the digester volume must be increased to accommodate grit accumulation.

6. Moderately mixed digestion systems, mixed by circulating sludge through an external heat exchanger, may be loaded at a rate up to 40 pounds of volatile solids per 1,000 cubic feet of volume per day (0.64 kilograms per cubic meter per day) in the active digestion units. This loading may be modified upward or downward depending upon the degree of mixing provided.

7. For those units intended to serve as supernatant separation tanks, the depth should be sufficient to allow for the formation of a reasonable depth of supernatant liquor. A minimum sidewater depth of 20 feet (6.1 meters) is recommended.

B. Tank Covers

1. All anaerobic digestion tanks shall be covered. Primary tanks may be equipped with gas-tight, fixed steel or concrete covers or floating steel covers made gas-tight by extended rims. Secondary tank covers may be of the fixed type or floating steel type, including gas storage type units.

2. Floating covers shall be equipped with a guide rail system to prevent tipping and lower-landing ridges, and cover restraints.

C. Sludge Inlets and Outlets

1. Multiple recirculation, withdrawal and return points, should be provided, to enhance flexible operation and effective mixing, unless mixing facilities are incorporated within the digester. The returns, in order to assist in scum breakup, should discharge above the liquid level and be located near the center of the tank.

2. Raw sludge feed to the digester should be through the sludge heater and recirculation return piping, or directly to the tank if internal mixing facilities are provided.

3. Sludge withdrawal to disposal should be from the bottom of the tank. This pipe should be interconnected with the recirculation piping, if such piping is provided, to increase versatility in mixing the tank contents. Additional alternative withdrawal lines should be provided.

D. Supernatant Withdrawal

1. Supernatant piping should not be less than 6 inches (15 centimeters) in diameter. Piping should be arranged so that withdrawal can be made from three or more levels in the digester. A positive, unvalved, vented overflow shall be provided with a drop leg for a liquid seal and downstream vent.

2. If a supernatant selector is provided, provisions shall be made for at least one other draw-off level, located in the supernatant zone of the tank, in addition to the unvalved emergency supernatant draw-off pipe. High pressure back-wash facilities shall be provided.

3. Multiple supernatant draw-offs should be provided for sampling at different levels. Sampling pipes must be at least 1 1/2 inches (3.8 centimeters) in diameter, and should terminate at a suitably-sized sampling sink or basin.

E. Sampling. Sampling hatches shall be provided in all tank covers with water seal tubes extending to beneath the liquid surface.

F. Gas Collection, Piping and Appurtenances

1. General. All portions of the gas system, including the space above the tank liquor, storage facilities and piping, shall be so designed that under normal operating conditions, including sludge withdrawal, the gas will be maintained under positive pressure. All enclosed areas where any gas leakage might occur shall be adequately ventilated.

2. Safety Equipment. All safety equipment shall be provided where gas is produced. Pressure and vacuum relief valves, flame traps, gas detectors, and automatic safety shut off valves, shall be provided.

3. Gas Piping and Condensate. Gas piping shall be of adequate diameter for gas flow rate and shall slope to condensate traps at low points. The use of float-controlled condensate traps is not permitted.

4. Gas Utilization Equipment.

a. Gas-fired boilers for heating digesters shall be located in a separate room not directly connected to the digester gallery. Gas lines to these units shall be provided with flame traps.

b. Dual fuel engines on major pumps or blowers, should be installed with possible recovery of exhaust and jacket cooling heat for use in heating digester or building spaces. An alternate system would consist of direct electric power generation. Gas cleaning and storage may be desirable.

5. Electrical Fixtures. Electrical fixtures and controls in enclosed places where hazardous gases may accumulate shall comply with the National Electrical Code for Class I, Division I Group D locations. Digester galleries must be isolated from normal operating areas to avoid an extension of the hazardous location.

6. Waste Gas.

a. Waste gas burners shall be readily accessible and should

be located at least 25 feet (7.6 meters) away from any plant structure if placed at ground level, or they may be located on the roof of the control building at a height of not less than three feet (0.9 meter) from the top of the roof.

b. All waste gas burners shall be equipped with automatic ignition, such as a pilot light or a device using a photoelectric cell sensor. Consideration should be given to the use of natural or propane gas to insure reliability of the pilot light.

c. Necessary approvals from the Utah Air Conservation Committee and its succeeding authorities, shall be obtained for burning any waste gas and any other emissions from the treatment plant.

7. Ventilation. Any underground enclosures connecting with digesters or containing sludge or gas piping or equipment shall be forced ventilated. The piping gallery for digesters should not be connected to other passages.

8. Metering. Gas meters, with by-pass, shall be provided to meter total and waste gas production.

G. Digester Heating

1. Insulation. Wherever possible, digesters should be constructed above ground water level and should be suitably insulated to minimize heat loss.

2. Heating Facilities

a. External Heating. Sludge may be heated by circulating the sludge through external heaters. Piping should be designed to provide for the preheating of feed sludge before introduction to the digesters, especially if sludge thickeners are not used, or if feed is a batch feed resulting in high intermittent feed rates. Provisions shall be made in the lay-out of the piping and valving to facilitate cleaning of these lines. Heat exchanger sludge piping should be sized for heat transfer requirements.

b. Other Heating Methods. The executive secretary may approve review other types of heating facilities based on the information submitted by the applicant.

3. Heating Capacity. Heating capacity sufficient to consistently maintain the design sludge temperature shall be provided. Where digester tank gas is used for sludge heating, an auxiliary fuel supply is required.

4. Hot Water Internal Heating Controls

a. A suitable automatic mixing valve shall be provided to temper the boiler water with return water so that the inlet water to the heat jacket can be held below a temperature at which caking will be accentuated. Manual control should also be provided by suitable by-pass valves.

b. The boiler should be provided with suitable automatic controls to maintain the boiler temperature at approximately 180 degrees Fahrenheit (82.2 degrees Centigrade), to minimize corrosion, and to shut off the main gas supply in the event of pilot burner or electrical failure, low boiler water level, or excessive temperatures.

c. Thermometers shall be provided to show temperatures of the sludge, hot water feed, hot water return, and boiler water.

H. Mixing Systems. Sludge mixing systems shall be gas recirculation, draft tube mixing, mechanical mixer or pump recirculation types. The mixing system should be designed such that routine maintenance can be performed without taking the digester out of service.

I. Operational Considerations

1. Piping Flexibility. Where two stage digestion is practiced, provision shall be made to feed and heat the secondary digester. Mixing systems should be installed in secondary digestion units.

2. Provision to pump secondary sludge to primary units for reseeding and extending sludge detention time is recommended.

3. When digested sludge is pumped to the dewatering unit, piping shall be laid out so as to prevent uncontrolled gravity flow.

4. Provisions to adjust pH and alkalinity by addition of chemicals shall be made.

J. Maintenance Features for draining, cleaning, and maintenance must be considered in the design of the digesters.

1. Slope. The tank bottom should slope to drain toward the withdrawal pipe. For tanks equipped with a suction mechanism for withdrawal of sludge, a bottom slope of 1:12 or greater is recommended. Where the sludge is to be removed by gravity alone, 1:4 slope is recommended.

2. Access Manholes. At least two 36 inch (91 centimeters) diameter access manholes should be provided in the top of the tank in addition to the gas dome. There should be stairways to reach the access manholes. A separate sidewall manhole shall be provided. The opening should be large enough to permit the use of mechanical equipment to remove grit and sand.

3. Safety. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code etc., must be reviewed and complied with. Those requirements take precedence over the requirements stated herein, if more stringent, and should be incorporated in the design. Nonsparking tools, safety lights, rubber-soled shoes, safety harness, gas detectors for inflammable and toxic gases, and at least two self-contained breathing units shall be provided for emergency use.

9.5. Aerobic Digestion

A. General. Aerobic digestion may be used for stabilization of primary sludge, and activated or trickling filter sludge. Digestion may take place in single or multiple tanks designed to provide effective air mixing, reduction of the organic matter, supernatant separation, and sludge concentration under controlled conditions.

B. Tank Capacity. The digestion tank capacity shall be based on such factors as, quantity of sludge produced, sludge concentration and related characteristics, time of aeration, sludge temperature, etc.

1. Volatile Solids Loading. Volatile suspended solids loading shall not exceed 100 pounds per 1,000 cubic feet of volume per day (1.60 kilograms per cubic meter per day) in the digestion units.

2. Detention Time. The minimum detention time of 15 days shall be provided for aerobic digestion. The detention time may vary with sludge characteristics. Where sludge temperature is lower than 50 degrees Fahrenheit (10 degrees Centigrade) additional detention time should be considered. Covering of the aerobic digesters may be considered to prevent heat losses to atmosphere.

3. Multiple Units. Multiple tanks are required for plants designed to treat more than 1 million gallons per day (3,785 cubic meters per day). Adequate provision must be made for sludge handling and storage for the plants treating less than 1 million gallons per day (3,785 cubic meters per day). When multiple units are provided, ability to utilize them in serial operation is recommended.

4. Mixing and Air Requirements

a. Aerobic sludge digestion tanks shall be designed for effective mixing. Sufficient air shall be provided to keep the solids in suspension and maintain dissolved oxygen between 1 to 2 milligrams per liter.

b. A minimum air volume of 30 cubic feet per minute per 1,000 cubic feet of tank volume (0.51 liters per cubic meter per second) shall be provided with the largest blower out of service for the mixing and aeration requirements. For the diffused aeration systems, the nonclog type air diffusers are recommended, and shall be designed to permit continuity of service.

c. A minimum of 75 horsepower per million gallon of tank volume (15 watts per cubic meter) shall be provided for mechanical aeration systems. Mechanical aerators must be protected where freezing temperatures are expected. Submerged turbine units or floating surface aerators may be considered to allow for liquid level variation.

5. Supernatant Separation. Facilities shall be provided for effective separation and withdrawal of supernatant and for effective collection and removal of scum and grease. Multiple level decant withdrawal lines should be provided.

6. Foam Spray. Foam suppression spray water piping and nozzles should be provided.

9.6. Sludge Dewatering

A. Belt Filter Press

1. Design Basis

a. Hydraulic and solids loading rates, conditioning requirements, and performance shall be based on pilot unit performance or operational results on similar sludges.

b. Multiple units are required unless storage capacity or alternate dewatering methods are available to handle sludge during prolonged power outage.

c. In plants designed for 1 million gallons per day (3,785 cubic meters per day), the operational period should not usually exceed 35 hours per week which allows one shift operation with time for chemical makeup, cleanup and delays. In plants designed for over 1 million gallons per day (3,785 cubic meters per day), the operational period may approach 20 hours per day.

2. Equipment Features

a. The facility should provide for chemical storage, feed equipment, belt wash water, and filtrate return and for conveying and loading sludge cake onto transport vehicles.

b. Belt alignment and tensioning should be regulated automatically.

c. If a single unit is provided, standby equipment should be provided for the sludge feed pump, belt wash, and chemical feed.

d. Facilities or piping for filtrate and wash water sampling should be provided.

3. Operational Considerations. Good house keeping and maintenance features should include press housing, ventilation, safe and convenient access for cleanup and maintenance, floor drains, minimum splashing of filtrate or wash water, etc.

9.7. Sludge Drying Beds

A. Design Basis

1. The area of sludge drying beds is determined by factors such as, climatic conditions, the character and volume of the sludge to be dewatered, the method and schedule of sludge removal, and other methods of sludge disposal.

2. The applicant or the design engineer must submit the basis of design including calculations for review. When the basis of design is not submitted, the drying bed area shall be determined on the basis of 4 square feet per population equivalent (0.38 square meter per population equivalent) when the drying bed is the primary method of dewatering, and 2.0 square feet per population equivalent (0.19 square meter per population equivalent) if it is to be used as a backup dewatering unit. An increase of bed area by 25 percent is required for paved beds. Sludge storage or alternate dewatering methods should be considered for winter weather.

3. A ground water discharge permit may be required for beds without an impervious base. Hydraulic conductivity shall not be greater than 1 x 10-6 centimeters per second or as required for compliance with the provisions of R317-6 (Ground Water Quality Protection Regulations).

B. Design Features

1. Gravel. The lower course of gravel around the underdrains should be properly graded and not less than 12 inches (30.5 centimeters) in depth, extending at least 6 inches (15.2 centimeters) above the top of the underdrains. It is desirable to place this in two or more layers. The top layer of at least 3 inches (7.6 centimeters) must consist of gravel 1/8 inch to 1/4 inch (3.18 to 6.35 millimeters) in size. The remaining layer of gravel below the top 3-inch (7.6 centimeters) layer may be 3/4 to 1 inch (1.9 to 2.5 centimeters) in size.

2. Sand. The top course placed above the gravel should consist of at least 6 to 9 inches (15.2 to 22.9 centimeters) of clean coarse sand. The finished sand surface should be level.

3. Underdrains. Underdrains should be clay pipe or concrete drain tile at least 4 inches (10.2 centimeters) in diameter laid with open joints. Underdrains should be spaced not more than 20 feet (6.1 meters) apart. Underdrainage should be returned to the process with raw or settled sewage.

4. Partially Paved Type. The partially paved drying bed should be designed with consideration for the space requirement to operate mechanical equipment for removing the dried sludge. Paving must positively slope to the underdrains.

5. Containment Walls. Walls should be water-tight and extend 15 to 18 inches (38 to 46 centimeters) above and at least 6 inches (15 centimeters) below the surface of the drying bed. Outer walls should be curbed to prevent soil from washing onto the beds.

6. Sludge Removal. Not less than two beds should be provided and they should be arranged to facilitate sludge removal. Paved truck tracks should be provided for all percolation-type sludge beds.

7. Sludge Feed Line. The sludge pipe to the drying beds should terminate at least 12 inches (30.5 centimeters) above the floor surface and be so arranged that it will drain into the bed. Concrete splash blocks should be provided at sludge discharge points.

9.8. Other Sludge Treatment Methods. Other methods for sludge dewatering, treatment, and stabilization will be considered by the executive secretary based on such factors as the need, suitability of application and process, reliability and flexibility, etc.

R317-3-10. Lagoons.

10.1. Lagoon Siting

A. Distance from Habitation. A lagoon should be sited as far as practicable, with a minimum of 1/4 mile (0.4 kilometer), from areas developed for residential or commercial or institutional purposes or may be developed for such purposes within a foreseeable future. Site characteristics such as topography, prevailing wind direction, forests, etc., must be considered in siting the lagoon.

B. Prevailing Winds. The lagoon should be sited where the direction of local prevailing winds is towards uninhabited areas.

C. Surface Runoff. The lagoon should not be sited in watersheds receiving significant amounts of storm-water runoff. Storm-water runoff should be diverted around the lagoon and protect lagoon embankments from erosion.

D. Hydrology and hydrogeology. Close proximity to water supplies and other facilities subject to wastewater contamination should be avoided in siting the lagoon. A minimum separation of four (4) feet (1.2 meters) between the bottom of the lagoon and the maximum ground water elevation should be maintained.

E. Geology

1. The lagoon shall not be located in areas which may be subjected to karstification, i.e., sink holes or underground streams generally occurring in area underlain by porous limestone or dolomite or volcanic soil.

2. A minimum separation of 10 feet (3.0 meters) between the lagoon bottom and any bedrock formation is recommended.

10.2. Small Facilities. The executive secretary will review and approve the construction of a lagoon for a design rate of flow less than 25,000 gallons per day (95 cubic meters per day) only if:

A. there are no other alternatives for wastewater treatment and disposal available to the applicant;

B. there is no other appropriate technology for wastewater treatment and disposal except lagoon; and

C. the applicant has resources to satisfactorily operate and

maintain the lagoon.

10.3. Basis of Design. Design variables such as lagoon depth, number of units, detention time, and additional treatment units must be based on effluent standards for BOD_5, total suspended solids (TSS), E. coli, dissolved oxygen (DO), and pH.

A. Design for Discharging and Total Containment Lagoons

1. The design shall be based on BOD_5 loading ranging from 15 to 35 pounds per acre per day (16.8-39.2 kilograms per hectare per day).

2. The design for total containment lagoons shall be based on conservative estimates of precipitation, evaporation, seepage or percolation and inflow relevant to the site. A mass diagram showing each of the foregoing factors on a month-by-month basis, shall be prepared and submitted with the design and plans for review.

B. Design Depth. The minimum operating depth should be such that growth of aquatic plants is suppressed to prevent damage to the dikes, bottom, control structures, aeration equipment and other appurtenances.

1. Discharging or Total Containment Lagoons. The maximum water depth shall be 6 feet (1.8 meters) in primary cells. Greater depth in subsequent cells may be deeper than 6 feet provided that supplemental aeration or mixing is incorporated in the design. Minimum operating depth shall be three feet.

2. Aerated Lagoons. The design water depth should range from 10 to 15 feet (three to 4.5 meters). The type of the aeration equipment, waste strength and climatic conditions affect the selection of the design water depth.

3. Sludge Accumulation. The minimum depth of 18 inches (45 centimeters) for sludge accumulation shall be provided in primary cells of facultative lagoons.

C. Freeboard. The minimum freeboard shall be three (3) feet (1.0 meter). For small systems - less than 50,000 gallons per day (190 cubic meters per day), the minimum freeboard can be reduced to two (2) feet (0.6 meter).

D. Slope

1. Maximum Dike Slope. The inner and outer dike slopes shall not be steeper than 3 horizontal to 1 vertical (3:1).

2. Minimum Dike Slope. Inner dike slope shall not be flatter than 4 horizontal to 1 vertical (4:1). A flatter slope can be specified for larger installations because of wave action, but have the disadvantages of added shallow areas, that are conducive to emergent vegetation.

E. Seepage

1. The bottom of lagoons treating domestic sewage shall be no less than 12-inch (30 centimeters) in thickness, constructed in two six-inch (15 centimeters) lifts. The selection of the type of seals using soils, bentonite, or synthetic liners for the lagoon bottom shall be based on the design hydraulic conductivity, durability, and integrity of the proposed material.

2. Hydraulic conductivity of the lagoon bottom as constructed or installed, shall be such that it meets the requirements of ground water discharge permit issued under R317-6, (Ground Water Quality Protection rules). It shall not exceed 1.0×10^{-6} centimeters per second.

3. The seepage loss may vary with the thickness of the bottom seal and hydraulic head thereon. Detailed calculations on the determination of seepage loss shall be submitted with the design. It shall not exceed 6,500 gallons per acre per day (60.8 cubic meters per hectare per day).

4. Results of field and laboratory hydraulic conductivity tests, including a correlation between them, shall meet the design and ground water discharge permitting requirements, before the use of lagoon can be authorized.

5. Hydraulic conductivity for the lagoon where industrial waste is a significant component of sewage, shall be based on ground water protection criteria contained in R317-6 (Ground Water Quality Protection rules).

F. Detention time

1. Discharging Lagoons. Detention time in the lagoon shall be the greater, and exclusive of the capacity provided for sludge build-up, of:

a. 120 days based on winter flow and the maximum operating depth of the entire system; or

b. 60 days based on summer flow and peak monthly infiltration/inflow.

c. The detention time shall not be less than 150 days at the mean operating depth for effluent discharge without chlorination. In order to meet bacteriologic standards in such a case, at least 5 cells shall be provided. The detention time and organic loading rate shall depend on climatic or stream conditions.

2. Aerated Lagoons

a. The detention time shall be the greater of:

(1) 30 days minimum; or

(2) the value determined using the following formula: $E = (1/(1 + (2.3 \times K_1 \times t)))$ where: t = detention time, days; E = fraction of BOD_5 remaining in an aerated lagoon; K_1 = reaction coefficient, aerated lagoon, base 10. For normal domestic sewage, the K_1 value may be assumed to be 0.12 day^{-1} at 20 degrees Centigrade, and 0.06 day^{-1} at one degree Centigrade.

b. The reaction rate coefficient for domestic sewage which includes some industrial wastes must be determined experimentally for various conditions which might be encountered in the aerated lagoons. The reaction rate coefficient based on temperature used in the experimental data, shall be adjusted for the minimum sewage temperature.

G. Aeration Requirements for Aerated Lagoons

1. The design parameters for the aerated lagoon should be based on pilot testing or validated experimental data.

2. When pilot testing is not conducted, the design should be based on two pounds of oxygen input per pound of BOD_5 applied (two kilograms of oxygen input per kilogram of BOD_5 applied). However, it may vary with the degree of treatment, and the concentration of suspended solids to be maintained. A tapered mode of aeration is permitted based on applied BOD_5 to each cell.

3. Aeration equipment shall be capable of maintaining a minimum dissolved oxygen level of 2 milligrams per liter in the lagoon at all times such that their circles of influence meet.

a. Circle of Influence. It is that area in which return velocity is greater than 0.15 feet per second as indicated by the manufacturer's certified data. Table R317-3-10.3(G)(3)(a) may be used when the manufacturer's certified data is not available.

b. Freezing. Suitable protection from weather shall be provided for aerators and electrical controls.

H. Industrial Wastes. For industrial waste treatment using lagoon, the design parameters shall be based on the type and treatability of industrial wastes using biological processes. In some cases it may be necessary to pretreat industrial waste or combine with domestic sewage.

10.4. Lagoon Construction Details

A. Cell Shape. The shape of all cells should be such that there are no narrow or elongated portions. Round, square or rectangular lagoons with a length not exceeding three times the width are most desirable. No islands, peninsulas or coves are permitted. Dikes should be rounded at corners to minimize accumulations of floating materials. Common-wall dike construction, wherever possible, is strongly encouraged.

B. Multiple Units

1. At a minimum, the lagoon system shall consist of three cells of approximately equal capacity designed to facilitate both series and parallel operations.

2. The executive secretary may approve less than three cells on the basis of review of factors such as, the rate of flow,

the need, treatment reliability, etc.

3. All systems shall be designed with piping:

a. to permit isolation of any cell without affecting the transfer and discharge capabilities of the total system, and

b. to split the influent waste load to a minimum of two cells or all primary cells in the system.

C. Embankments and Dikes

1. Material. Dikes shall be constructed of relatively impervious material and compacted to no less than 90 percent Standard Proctor Density at 3 percent above the optimum moisture density to form a stable structure. The area where the embankment is to be placed shall be from vegetation and unstable organic material.

2. Top Width. The minimum dike width shall be 8 feet (2.4 meters) and shall permit access by maintenance vehicles.

D. Lagoon Bottom

1. Soil. Soil used in constructing the lagoon bottom (not including seal) and dike cores shall be incompressible and tight and compacted at a moisture content of 3 percent above the optimum water content to at least 90 percent Standard Proctor Density.

2. Uniformity. The lagoon bottom should be as level as possible at all points. Finished elevations shall not be more than three (3) inches (7.5 centimeters) from the average elevation of the bottom.

3. Prefilling. The lagoon should be prefilled to a level which protects the liner, prevents weed growth, reduces odor, and maintains moisture content of the seal. However, the dikes must be completely prepared before the introduction of any water.

E. Construction Quality Control and Assurance. A construction quality control and assurance plan showing frequency and type of testing for materials used in construction shall be submitted with the design for review and approval. Results of such testing, gradation, compaction, field permeability, etc., shall be submitted to the executive secretary.

F. Erosion Control

1. The site shall be protected from erosion. The design of control measures shall be based on factors, such as lagoon location and size, seal material, topography, prevailing winds, cost breakdown, application procedures, etc.

2. For aerated lagoons, the slopes and bottom shall be protected from erosion resulting from turbulence.

3. Exterior face of the dike slope shall be protected from erosion due to severe flooding of a water course.

4. Seeding. The outside surface of dikes shall have a cover layer of at least 4 inches (10 centimeters), of fertile topsoil to promote establishment of an adequate vegetative cover wherever riprap is not utilized. Prior to prefilling, adequate vegetation shall be established on dikes from the outside toe to 2 feet (0.6 meter) above the lagoon bottom on the interior as measured on the slope. Perennial-type, low-growing, native, spreading grasses that minimize erosion and can be mowed are most satisfactory for seeding on dikes. Alfalfa and other deep-rooted crops must not be used for seeding since the roots of this type are apt to impair the water holding efficiency of the dikes.

5. Riprap or equivalent material shall be placed from 1 foot (0.3 meter) above the high water mark to two feet (0.6 meter) below the low water mark (measured on the vertical) for protection from severe wave action.

a. Riprap. The interior face of dikes must be protected from erosion by riprap or other equivalent methods of erosion control.

(1) Riprap layer shall be of durable, angular, sound and hard, field or quarry stones, and shall be free from seams, cracks and structural defects.

(2) The thickness of riprap layer shall be at least 8 inches (20 centimeters).

(3) Stones to be used in the riprap layer shall meet the following requirements:

(a) A minimum of 50 percent of stones by weight, shall be of sizes between two-thirds and one and one-half of the layer thickness;

(b) No more than ten percent of stones by weight, shall be of a size less than one-tenth of the layer thickness;

(c) The specific weight of stones must range between 2.5 and 2.82;

(d) Durability shall be tested in accordance with ASTM Standard C-535, as amended, and stones wearing in excess of 40 percent shall not be used.

(e) Stones shall be graded and manipulated in size so as to produce a regular surface of dense and stable mass. A stable foundation for the placed riprap shall be provided at the toe of the dike.

10.5. Influent Piping

A. Influent and Effluent Structures

1. All influent and effluent structures shall be located to minimize short-circuiting within lagoons, and to avoid blocking of lagoon circulation. Such structures must have protection against freezing or ice damage under winter conditions.

2. Inlets to the primary cells shall meet the following criteria:

a. Surcharging of upstream sewer from the inlet manhole is not permitted.

b. Multiple influent discharge points for primary cells of 20 acres (8 hectares) or larger should be provided to enhance the distribution of waste load in the cell.

c. Discharge shall be in the center of a round or a square cell, or at the third point farthest from the outlet structure in a rectangular cell, or at least 100 feet (30 meters) from the toe of the dike.

d. All aerated cells shall have an influent line which distributes the load within the mixing zone of the aeration equipment. Multiple inlets may be considered for a diffused aeration system.

e. Force mains shall be valved at the lagoon, and may terminate in a vertically or horizontally discharging section. The discharge end of the vertical pipe must be located no more than one foot above the lagoon bottom. Flow velocities in the discharge section entering the lagoon must not be in excess of two feet per second.

B. Influent Discharge Apron

1. The influent line shall discharge horizontally into a shallow, saucer-shaped, depression extending below the lagoon bottom not more than the diameter of the influent pipe plus 1 foot.

2. The end of the discharge line shall rest on a suitable concrete apron large enough to prevent the terminal influent velocity at the end of the apron from causing soil erosion. A 2-foot (0.6 meter) square apron shall be provided at the minimum.

C. Flow Measurement. Influent flow to the lagoon shall be continuously indicated and recorded. Flow measurement and recording equipment shall be weatherproof.

D. Level Gauges. Level gauges with clear markings shall be provided in:

1. each cell to measure and manually record the depth; and

2. the primary flow measurement device structure to indicate the depth or the rate of flow.

E. Manhole

1. A manhole or vented cleanout wye shall be installed prior to entrance of the influent line into the primary cell and shall be located close to the dike as topography permits. Its invert shall be at least 6 inches (15 centimeters) above the maximum operating level of the lagoon and provide sufficient hydraulic head without surcharging the manhole.

2. A manhole is required for small systems to house flow measurement device. For larger systems, flow measurement device and related instrumentation must be housed in a

headworks type structure.

F. Flow Distribution. Flow distribution structures shall be designed to effectively split hydraulic and organic loads equally to primary cells.

G. Material. The material for influent line to the lagoon should meet the requirements of material for underground sewer construction described in this rule. Unlined corrugated metal pipe is not permitted due to corrosion problems. The material selection shall be based on factors such as, wastewater characteristics, heavy external loadings, abrasion, soft foundations, etc.

10.6. Control Structures and Interconnecting Piping

A. Structure

1. As a minimum, control structures shall:

a. be accessible for maintenance and adjustment of controls;

b. be adequately ventilated for safety and to minimize corrosion;

c. be locked to discourage vandalism;

d. contain controls to permit water level and flow rate control, and complete shutoff;

e. be constructed of non-corrodible materials (metal-on-metal); and

f. be located to minimize short-circuiting within the cell and avoid freezing and ice damage.

2. Recommended devices to regulate water level are valves, slide tubes or dual slide gates. Regulators should be designed so that they can be preset to stop flows at any lagoon elevation.

B. Piping. All piping shall be of cast iron or other material for installation of underground piping. The piping shall be located along the bottom of the lagoon with the top of the pipe just below average elevation of the lagoon bottom. Pipes should be anchored and protected from erosion.

10.7. Effluent Discharge Piping

A. Submerged Takeoffs. For lagoons designed for shallow or variable depth operations, submerged takeoffs are required. Intakes shall be located a minimum of 10 feet (3.0 meters) from the toe of the dike and 2 feet (0.6 meter) from the seal, and shall employ vertical withdrawal.

B. Multi-level Takeoffs. For lagoons that are designed deeper than 10 feet (3 meters), enough to permit stratification of lagoon content, multiple takeoffs are required. There shall be a minimum of three withdrawal pipes at different elevations. Adequate structural support for takeoffs shall be provided.

C. Emergency Overflow. An emergency overflow should be provided to prevent overtopping of dikes. The hydraulic capacity for continuous discharge structures and piping shall allow for a minimum of 250 percent of the design flow of the system. The hydraulic capacity for controlled-discharge systems shall permit transfer of water at a minimum rate of six (6) inches (15 centimeters) of lagoon water depth per day at the available head.

10.8. Miscellaneous

A. Fencing. The lagoon area shall be enclosed with not less than 6 feet high chain link fence to prevent entering of livestock and to discourage trespassing. Fencing must not obstruct vehicle traffic on top of the dikes. A vehicle access gate of sufficient width to accommodate all maintenance equipment shall be provided. All access gates shall be provided with locks.

B. Access. An all-weather access road shall be provided to the lagoon site to allow year-round maintenance of the facility.

C. Warning Signs. Permanent signs shall be provided along the fence around the lagoon to designate the nature of the facility and advise against trespassing. At least one sign shall be provided on each side of the site and one for every 500 feet (150 meters) of its perimeter.

D. Service Building A service building for laboratory and maintenance equipment should be considered.

10.9. Industrial Waste Lagoons. The executive secretary will review the design of lagoons for treatment of industrial wastes on the basis of such factors as treatability, operability, reliability, ground water protection levels, water quality objectives, etc.

R317-3-11. Land Application of Wastewater Effluents.

11.1. Effluent Criteria. Land application of effluents is permitted following treatment if standards are met as defined in R317-1, Definitions and General Requirements. The proposal for land application must include detailed site information, effluent characteristics, meteorological data, type of crop to be grown, ground water data, and a site management plan and practices.

11.2. Site Operation and Management

A. Piping System

1. All distribution pipes and sprinklers must have the capability to be completely drained.

2. Main distribution headers must have flow measurement devices and pressure gages. All land applied flow must be totalized.

B. Warning Signs. Signs warning of the nature of the facility shall be provided at the boundaries of the site.

R317-3-12. Effluent Filtration.

12.1. Granular Media Filters. Granular media filters may be used as a tertiary treatment device for the removal of residual suspended solids from secondary effluents. A pretreatment process such as chemical coagulation and sedimentation or other acceptable process must precede the filter units, where effluent suspended solids requirements are less than 10 milligrams per liter, or where secondary effluent quality can be expected to fluctuate significantly, or where filters follow a treatment process and where significant amounts of algae will be present.

12.2. Design Considerations. The plant design should incorporate flow-equalization facilities to moderate filter influent quality and quantity. The selection of pumping equipment ahead of filter units should be designed to minimize shearing of floc particles.

A. Filter Types. Filters may be of the gravity or pressure type. Pressure filters shall be provided with ready and convenient access to the media for treatment or cleaning. Where greases or similar solids which result in filter plugging are expected, filters should be of the gravity type.

B. Filtration Rates. Filtration rates shall not exceed 5 gallons per minute per square foot. (3.4 liters per square meter per second) based on the maximum hydraulic flow rate applied to the filter units.

C. Number of Units. Total filter area shall be provided in two or more units, and the filtration rate shall be calculated on the total available filter area with one unit out of service.

D. Filter Backwash

1. Backwash Rate. The backwash rate shall be adequate to fluidize and expand each media layer a minimum of 20 percent based on the media selected. The backwash system shall be capable of providing a variable backwash rate having a maximum of at least 20 gallons per minute per square foot, (13.6 liters per square meter per second) and a minimum backwash period of 10 minutes.

2. Backwash Pumps. Pumps for backwashing filter units shall be sized and interconnected to provide the required rate to any filter with the largest pump out of service. Filtered water should be used as the source of backwash water. Waste filter backwash shall be returned to the treatment process or otherwise adequately treated.

E. Filter Media

1. Selection. Selection of proper media size will depend

on the rate of filtration rate, the type of pretreatment, filter configuration, and effluent quality objectives. In dual or multi-media filters, media size selection must consider compatibility among media.

2. Media Specifications. Table R317-3-12.2(E)(2) provides minimum media depths and the normally acceptable range of media sizes. The applicant has the responsibility for selection of media to meet specific conditions and treatment requirements relative to the project under consideration.

12.3. Filter Appurtenances. The filters shall be equipped with wash water troughs, surface wash or air scouring equipment, means of measurement and positive control of the backwash rate, equipment for measuring filter head loss, positive means of shutting off flow to a filter being backwashed, and filter influent and effluent sampling points. If automatic controls are provided, there shall be a manual override for operating equipment, including each individual valve essential to the filter operation. The underdrain system shall be designed for uniform distribution of backwash water (and air if provided) without danger of clogging from solids in the backwash water. Provision shall be made to allow periodic chlorination of the filter influent or backwash water to control slime growths.

12.4. Reliability. Each filter unit shall be designed and installed so that there is ready and convenient access to all components and the media surface for inspection and maintenance without taking other units out of service. The need for enclosing filter units shall depend on expected extreme climatic conditions at the treatment plant site. As a minimum, all controls shall be protected from adverse process and climatic conditions. The structure housing filter controls and equipment shall be provided with adequate heating and ventilation equipment to minimize problems with excess humidity.

12.5. Backwash Surge Control. The rate of waste filter backwash water return to treatment units shall be controlled such that the rate does not exceed 15 percent of the design average daily flow rate to the treatment units. The hydraulic and organic loads from waste backwash water shall be considered in the overall design of the treatment plant. Where waste backwash water is returned for treatment by pumping, adequate pumping capacity shall be provided with the largest unit out of service.

12.6. Backwash Water Storage. Total backwash water storage capacity provided in an effluent clearwell or surge tank or other unit shall equal or exceed the volume required for two complete backwash cycles. Additional storage capacity should be considered for operational flexibility.

12.7. Proprietary Equipment. Where proprietary filtration equipment, not conforming to the preceding requirements is proposed, data which supports the capacity of the equipment to meet effluent requirements under design conditions shall be submitted for review and approval by the executive secretary.

TABLE R317-3-2.3(D)(4).
Minimum Slopes

Sewer Size, inch (centimeter)	Minimum Slope, feet per feet or meter per meter
8 (20)	0.00334
9 (23)	0.00285
10 (25)	0.00248
12 (30)	0.00194
14 (36)	0.00158
15 (38)	0.00144
16 (41)	0.00132
18 (46)	0.00113
21 (53)	0.00092
24 (61)	0.00077
27 (69)	0.00066
30 (76)	0.00057
36 (91)	0.00045

TABLE R317-3-4.4(H)(1).
Painting

Service	Color
Sludge	Brown
Gas	Orange
Potable Water	Blue
Non-Potable Water	Blue with a 6-inch (15 centimeters) red band spaced 30 inches (76 centimeters) apart
Chlorine	Yellow
Compressed Air	Green
Sewage	Gray

TABLE R317-3-6.2(B)(3)(d).
Loadings for Final Settling Tanks Following Activated Sludge Process

Process	Average Design Rate of Flow, million gallons per day (cubic meters per day)	Surface Loading, gallons per day per square foot (cubic meters per day per square meter)	Surface Loading, pounds per day per square foot (kilograms per day per square meter)
Contact Stabilization	0.5 (1,893) to 1.5 (5,678)	400 (16.3) to 600 (24.5)	
	Greater than or equal to 1.5 (5,678)	500 (20.4) to 700 (28.5)	
Extended Aeration	Less than or equal to 0.5 (1,893)	200 (8.2) to 400 (16.3)	
	0.5 (1,893) to 1.5 (5,678)	300 (12.3) to 500 (20.4)	25 (122.1)
	Greater than or equal to 1.5 (5,678)	400 (16.3) to 600 (24.5)	
Other than Contact Stabilization and Extended Aeration	Less than or equal to 0.5 (1,893)	400 (16.3) to 600 (24.5)	
	0.5 (1,893) to 1.5 (5,678)	500 (20.4) to 700 (28.5)	25 (122.1)
	Greater than or equal to 1.5 (5,678)	600 (24.5) to 800 (32.6)	

TABLE R317-3-7.1(E)(3)(a)(2).
Media Grading

	Percent by Weight
Passing 4-1/2 inch (11.4 centimeters) screen	100
Retained on 3 inch (7.6 centimeters) screen	95 - 100
Retained on 2 inch (5.1 centimeters) screen	98

TABLE R317-3-7.1(K)(1).
Hydraulic and Organic Loadings for Nitrification in Trickling Filters

Trickling Filter Configuration	Loadings

Rock or Slag Media Filters		
	Hydraulic Loading	Less than or equal to 4 million gallons per acre per day, or less than or equal to 4 cubic meters per square meter per day
	Organic Loading	Less than or equal to 25 pounds BOD_5 per day per 1000 cubic feet, or less than or equal to 0.4 kilograms BOD_5 per day per cubic meter
Deep Manufactured Media Filters		
	Hydraulic Loading	Less than or equal to 25 million gallons per acre per day, or less than or equal to 25 cubic meters per square meter per day
	Organic Loading	Less than or equal to 100 pounds BOD_5 per day per 1000 cubic feet, or less than or equal to 1.6 kilograms BOD_5 per day per cubic meter

TABLE R317-3-7.2(B)(1)(c)
Permissible Aeration Tank Capacities and Loadings

Process	Hydraulic Retention Time (HRT), hours	Solids Retention Time (SRT), days	Aeration Tank Loading, pounds of BOD_5 per day per 1000 cubic feet	Food:Mass (F:M) Ratio, pounds of BOD_5 per day per pound of MLVSS (2)	Mixed Liquor Suspended Solids (1) (MLSS) milligrams per liter
Conventional	4-8	4-8	20-40	0.2-0.4	1,500-4,000
Step Aeration					
Complete Mix					
Contact Stabilization	1-3 (4) 3-6 (5)	3-10	50 (3)	0.2-0.6	2,000-4,000
Extended Aeration, or Oxidation Ditch	24	30	10-12	0.05-0.1	2,000-4,000

Notes:
(1) Mixed Liquor Suspended Solids (MLSS) values are dependent upon the surface area provided for sedimentation and the rate of sludge return as well as the aeration process.
(2) Mixed Liquor Volatile Suspended Solids (MLVSS)
(3) Total Aeration capacity, includes both contact and reaeration capacities. Normally, the contact zone equals 30 to 35 percent of the total aeration capacity.
(4) Contact zone
(5) Reaeration zone

TABLE R317-3-7.2(B)(6)(a)(1).
Return Sludge Rate

Process	Q_R / Q, Percent
Standard Rate	15-75
Carbonaceous stage of separate stage nitrification	15-75
Step Aeration	15-75
Contact stabilization	50-150
Extended aeration	50-150
Nitrification stage of separate stage nitrification	50-200

TABLE R317-3-9.3(A)(1)(a).
Gravity Thickening

Type	Solids Loading Rate, pounds per day per square foot (kilograms per square meter per day)	Percent solids in thickened sludge
Primary sludge	20-30 (98-146)	8-10
Trickling filter sludge	8-10 (39-49)	7-9
Activated sludge	4-8 (20-49)	2.5-3
Combined primary and trickling filter sludges	10-12 (49-59)	7-9
Combined primary and activated sludges	6-10 (29-49)	3-6

TABLE R317-3-9.4(A)(4)(a).
Sludge Volume Generated

Type of Plant	cubic feet per Population Equivalent (P.E.) or cubic meters per Population Equivalent (P.E.)
Trickling Filter	5 (0.14)
Activated Sludge	6 (0.17)

TABLE R317-3-10.3(G)(3)(a).
Circle of Influence

Nameplate Horsepower	Radius, Feet
5	35
10-25	50
40-60	50-100
75	60-100
100	100

TABLE R317-3-12.2(E)(2).
Media Depths and Size

Media Material	Single Media	Multi-Media Two	Multi-Media Three
Anthracite:			
Minimum Depth, inches		20	20
Effective Size, millimeters		1-2	1-2
Sand:			
Minimum Depth, inches	48	12	10
Effective Size, millimeters	1-4	0.5-1	0.6-0.8
Garnet or Similar Material:			
Minimum Depth, inches			2
Effective Size, millimeters			0.3-0.6

Uniformity Coefficient shall be less than or equal to 1.7

40 CFR 503

R317. Environmental Quality, Water Quality.
R317-8. Utah Pollutant Discharge Elimination System (UPDES).
R317-8-1. General Provisions and Definitions.

1.1 COMPARABILITY WITH THE CWA. The UPDES rules promulgated pursuant to the Utah Water Quality Act are intended to be compatible with the Federal regulations adopted pursuant to CWA.

1.2 CONFLICTING PROVISIONS. The provisions of the UPDES rules are to be construed as being compatible with and complementary to each other. In the event that any of these rules are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

1.3 SEVERABILITY. In the event that any provision of these rules is found to be invalid by a court of competent jurisdiction, the remaining UPDES rules shall not be affected or diminished thereby.

1.4 ADMINISTRATION OF THE UPDES PROGRAM. The Executive Secretary of the Utah Water Quality Board has responsibility for the administration of the UPDES program, including pretreatment. The responsibility for the program is delegated to the Executive Secretary in accordance with UCA Subsection 19-5-104(11) and UCA Subsection 19-5-107(2)(a). The Executive Secretary has the responsibility for issuance, denial, modification, revocation and enforcement of UPDES permits, including general permits, Federal facilities permits, and sludge permits; and approval and enforcement authority for the pretreatment program.

1.5 DEFINITIONS. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(2) "Applicable standards and limitations" means all standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under Subsection 19-5-104(6) of the Utah Water Quality Act and regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal.

(3) "Application" means the forms approved by the Utah Water Quality Board, which are the same as the EPA standard NPDES forms, for applying for a UPDES permit, including any additions, revisions or modifications.

(4) "Average monthly discharge limit" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharge measured during a calendar month divided by the number of daily discharges measured during the month.

(5) "Average weekly discharge limit" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

(7) "Class I sludge management facility" means any POTW required to have an approved pretreatment program under R317-8-8 and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Executive Secretary, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(8) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(9) "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. 1251 et seq.).

(10) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(11) "Direct discharge" means the discharge of a pollutant.

(12) "Discharge of a pollutant" means any addition of any pollutants to "waters of the State" from any "point source." This definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

(13) "Economic impact consideration" means the reasonable consideration given by the Executive Secretary to the economic impact of water pollution control on industry and agriculture; provided, however, that such consideration shall be consistent and in compliance with the CWA and EPA promulgated regulations.

(14) "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board or its authorized representative.

(15) "Discharge Monitoring Report (DMR)" means EPA uniform national form or equivalent State form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees.

(16) "Draft permit" means a document prepared under R317-8-6.3 indicating the Executive Secretary's preliminary decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as provided in R317-8-5.6 is not a draft permit. A proposed permit prepared after the close of the public comment period is not a draft permit.

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

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

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

(20) "Facility or activity" means any UPDES point source, or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the UPDES program.

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

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

(23) "Indirect discharge" means a nondomestic discharger

introducing pollutants to a publicly owned treatment works.

(24) "Interstate agency" means an agency of which Utah and one or more states is a member, established by or under an agreement or compact, or any other agency, of which Utah and one or more other states are members, having substantial powers or duties pertaining to the control of pollutants.

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

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

(27) "Municipality" means a city, town, district, county, or other public body created by or under the State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes. For purposes of these rules, an agency designated by the Governor under Section 208 of the CWA is also considered to be a municipality.

(28) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the CWA.

(29) "New discharger" means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective UPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commenced discharging into waters of the state after August 13, 1979.

(30) "New source" means any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced;

(a) After promulgation of EPA's standards of performance under Section 306 of CWA which are applicable to such source, or

(b) After proposal of Federal standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the Federal standards are promulgated in accordance with Section 306 within 120 days of their proposal.

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

(32) "Permit" means an authorization, license, or equivalent control document issued by the Executive Secretary to implement the requirements of the UPDES regulations. "Permit" includes a UPDES "general permit." The term does not include any document which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

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

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

(35) "Pollutant" means, for the purpose of these regulations, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

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

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

(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 Executive Secretary. A proposed permit is not a draft permit.

(41) "Publicly-owned treatment works" (POTW) means any facility for the treatment of pollutants owned by the State, its political subdivisions, or other public entity. For the purposes of these regulations, POTW includes sewers, pipes or other conveyances conveying wastewater to a POTW providing treatment, treatment of pollutants includes recycling and reclamation, and pollutants refers to municipal sewage or industrial wastes of a liquid nature.

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

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

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

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

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

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

(48) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and

regulated under Section 312 of CWA.

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

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

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

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

(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 regulations 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 Executive Secretary as part of a large or medium municipal separate storm sewer system. See R317-8-3.9(6)(a) for provisions regarding this definition.

(5) "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) "Major outfall" means a major municipal separate storm sewer outfall.

(7) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of Census;

(b) Located in counties with unincorporated urbanized areas with a population greater than 100,000 but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) and (b) and that are designated by the Executive Secretary as part of the large or medium municipal separate storm sewer system. See R317-8-3.9(6)(b)

for provisions regarding this definition.

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

(9) "Municipal separate storm sewer system" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to paragraphs R317-8-1.6(4), (7), and (14) of this section, or designated under paragraph R317-8-3.9(1)(a)5 of this section.

(10) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

(11) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

(12) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(13) "Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA: any chemical the facility is required to report pursuant to section 313 of Title III of SARA: fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(14) "Small municipal separate storm sewer system" means all separate storm sewers that are:

(a) Owned or operated by the United States, State of Utah, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial waste, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State.

(b) Not defined as "large" or "medium" municipal separate storm sewer system pursuant to paragraphs R317-8-1.6(4) and (7) of this section, or designated under paragraph R317-8-3.9(1)(a)5 of this section.

(c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(15) "Small MS4" means a small municipal separate storm sewer system.

(16) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(17) "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program. See R317-8-3.9(6)(c) and (d) for provisions applicable to this definition.

(18) "Uncontrolled sanitary landfill means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runon or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

1.7 ABBREVIATIONS AND ACRONYMS. The following abbreviations and acronyms, as used throughout the UPDES regulations, shall have the meaning given below:

(1) "BAT" means best available technology economically achievable;

(2) "BCT" means best conventional pollutant control technology;

(3) "BMPs" means best management practices;

(4) "BOD" means biochemical oxygen demands;

(5) "BPT" means best practicable technology currently available;

(6) "CFR" means Code of Federal Regulations;

(7) "COD" means chemical oxygen demand;

(8) "CWA" means the Federal Clean Water Act;

(9) "DMR" means discharge monitoring report;

(10) "NPDES" means National Pollutant Discharge Elimination System;

(11) "POTW" means publicly owned treatment works;

(12) "SIC" means standard industrial classification;

(13) "TDS" means total dissolved solids;

(14) "TSS" means total suspended solids;

(15) "UPDES" means Utah Pollutant Discharge Elimination System;

(16) "UWQB" means the Utah Water Quality Board;

(17) "WET" means whole effluent toxicity.

1.8 UPGRADE AND RECLASSIFICATION. Upgrading or reclassification of waters of the State by the Utah Water Quality Board may be done periodically, but only using procedures and in a manner consistent with the requirements of State and Federal law.

1.9 PUBLIC PARTICIPATION. In addition to adjudicatory proceedings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these regulations, the Executive Secretary will investigate and provide written response to all citizen complaints. In addition, the Executive Secretary shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Executive Secretary will publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

1.10 INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE. The State adopts the following Federal standards and procedures, effective as of December 8, 1999 unless otherwise noted, which are incorporated by reference:

(1) 40 CFR 129 (Toxic Effluent Standards) with the following exceptions:

(a) Substitute "UPDES" for all federal regulation references to "NPDES".

(b) Substitute "Executive Secretary" for all federal regulation references to "State Director".

(c) Substitute "R317-8-4.4, R317-8-6, and R317-8-7" for all federal regulation references to "40 CFR Parts 124 and 125".

(2) 40 CFR 133 (Secondary Treatment Regulation) with the following exceptions:

(a) 40 CFR 133.102 for which R317-1-3.2 is substituted.

(b) 40 CFR 133.105.

(c) Substitute "UPDES" or "Utah Pollutant Discharge Elimination System" for all federal regulation references for "NPDES" or "National Pollutant Discharge Elimination System", respectively.

(d) Substitute "Executive Secretary" for all federal regulation references to "State Director" in 40 CFR 133.103.

(3) 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants)

(4) 40 CFR 403.6 (National Pretreatment Standards and Categorical Standards) with the following exception:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

(5) 40 CFR 403.7 (Removal Credits)

(6) 40 CFR 403.13 (Variances from Categorical Pretreatment Standards for Fundamentally Different Factors)

(7) 40 CFR 403.15 (Net/Gross Calculation)

(8) 40 CFR Parts 405 through 411

(9) 40 CFR Part 412, effective as of February 12, 2003, with the following changes:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

(b) Substitute "UPDES" for all federal regulation references to "NPDES".

(c) Substitute "Comprehensive Nutrient Management Plan" for all federal regulation references to "nutrient management plan".

(d) In 412.37(b), replace the reference 122.21(i)(1) with R317-8-3.6(2); and 122.42(e)(1)(ix) with R317-8-4.1(15)(d)1.i.

(e) In 412.37(c), replace the reference 122.42(e)(1)(ix) with R317-8-4.1(15)(d)1.i.

(10) 40 CFR Parts 413 through 471

(11) 40 CFR 503 (Standards for the Use or Disposal of Sewage Sludge), effective as of the date that responsibility for implementation of the federal Sludge Management Program is delegated to the State except as provided in R317-1-6.4, with the following changes:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

(12) 40 CFR 122.30

(13) 40 CFR 122.32

(a) In 122.32(a)(2), replace the reference 122.26(f) with R317-8-3.9(5).

(14) 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.

(15) 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.

(16) 40 CFR 122.35

(a) In 122.35, replace the reference 122 with R317-8.

(17) 40 CFR 122.36

(18) For the references R317-8-1.10(13), (14), (15), (16), and (17), make the following substitutions:

(a) "The Executive Secretary of the Water Quality Board" for the "NPDES permitting authority"

(b) "UPDES" for "NPDES"

(19) 40 CFR 122.23, effective as of February 12, 2003, with the following changes:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

(b) Substitute "UPDES" for all federal regulation references to "NPDES".

(c) In 122.23(d)(3), replace the reference 122.21 with R317-8-3.1; and 122.28 with R317-8-2.5.

(d) In 122.23(e), replace the reference 122.42 (e)(1)(vi)-(ix) with R317-8-4.1(15)(d)1.f.-i.

(e) In 122.23(f)(2), replace the reference 122.21(f) with R317-8-3.1(6); and 122.21(i)(1)(i)-(ix) with R317-8-3.6(2)(a)-(i).

(f) In 122.23(h), replace the reference 122.21(g) with R317-8-3.1(4).

R317-8-2. Scope and Applicability.

2.1 APPLICABILITY OF THE UPDES REQUIREMENTS. The UPDES program requires permits for the discharge of pollutants from any point source into waters of the State. The program also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a UPDES permit in accordance with R317-8-8. Prior to promulgation of State rules for sewage sludge use and disposal, the Executive Secretary shall impose interim conditions in permits issued for publicly owned treatment works or take such other measures as the Executive Secretary deems appropriate to protect public health and the environment from any adverse affects which may occur from toxic pollutants in sewage sludge.

(1) Specific inclusions. The following are examples of specific categories of point sources requiring UPDES permits for discharges. These terms are further defined in R317-8-3.5 through R317-8-8.10.

(a) Concentrated animal feeding operations;

(b) Concentrated aquatic animal production facilities;

(c) Discharges into aquaculture projects;

(d) Storm water discharges; and

(e) Silvicultural point sources.

(2) Specific exclusions. The following discharges do not require UPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to storage facility or a seafood processing facility, or when secured in waters of the state for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the State which are regulated under Section 404 of CWA.

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the State are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, but not discharges from concentrated animal feeding operations as defined in 40 CFR 122.23, discharges from concentrated aquatic animal production facilities as defined in R317-8-3.7, discharges to aquaculture projects as defined in R317-8-3.8, and discharges from silvicultural point sources as defined in R317-8-3.10.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Executive Secretary may otherwise require under

R317-8-4.2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, and which are issued under the state's Underground Injection Control program; and underground injections and disposal wells which are permitted by the Utah Water Quality Board pursuant to Part VII of the Utah Wastewater Disposal Regulations or the Board of Oil, Gas and Mining, Class II.

(i) Discharges which are not regulated by the U.S. EPA under Section 402 of the Clean Water Act.

(3) Requirements for permits on a case-by-case basis.

(a) Various sections of R317-8 allow the Executive Secretary to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, separate storm sewers and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Executive Secretary decides that an individual permit is required as specified in R317-8-2.1(3)(a), the Executive Secretary shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit within 60 days of receipt of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent adjudicative proceeding.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Executive Secretary may require the discharger to submit a permit application or other information regarding the discharge. In requiring such information, the Executive Secretary shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent adjudicative proceeding.

2.2 PROHIBITIONS. No permit may be issued by the Executive Secretary:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of the Utah Water Quality Act, as amended, or rules promulgated pursuant thereto;

(2) When the Regional Administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR 123.44;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Utah and all affected states;

(4) When, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of CWA.

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Utah water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the UPDES regulations and for which the Executive Secretary has performed a wasteload allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining wasteload allocations to allow for the discharge; and

(b) The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with Utah Water Quality Standards. (See R317-2.)

2.3 VARIANCE REQUESTS BY NON-POTW'S. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the time period specified in this section:

(1) Fundamentally different factors.

(a) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

1. For a request for a variance from best practicable control technology currently available (BPT) by the close of the public comment period under R317-8-6.5.

2. For a request for a variance from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT) by no later than:

a. July 3, 1989, for a request on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations: or

b. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(b) The request shall explain how the requirements of the applicable regulatory and statutory criteria have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided, however, that 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Executive Secretary to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant listed by the Administrator under Section 301((g)(4) of the CWA) must be filed as follows:

(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

1. Filing an initial request with the Executive Secretary stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and the nature of the modification being requested. This request must have been filed not later than:

a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977: or

b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977: and

2. Submitting a completed request no later than the close of the public comment period under R317-8-6.5 demonstrating that the requirements of R317-8-6.8 and the applicable requirements of R317-8-8.8 have been met. Notwithstanding this provision, the complete application for a request shall be filed 180 days before the Executive Secretary must make a

decision (unless the Executive Secretary establishes a shorter or longer period). For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with R317-8-2.3(2)(a)(2) and need not be preceded by an initial request under R317-8-2.3(2)(a)(2).

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(3) Delay in construction of POTW. An extension of the Federal statutory deadlines based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under R317-8-2.7, whichever is later, but in no event may this date have been later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) Innovative technology. An extension from the Federal statutory deadline for best available technology, or for best conventional pollutant control technology, based on the use of innovative technology may be requested no later than the close of the public comment period under Section R317-8-6.5 for the discharger's initial permit requiring compliance with best available technology or best conventional pollutant control technology. The request shall demonstrate that the requirements of Section R317-8-6.8 and 8-5.6 have been met.

(5) Thermal discharges. A variance for the thermal component of any discharge must be filed with a timely application for a permit under R317-8-3 except that if thermal effluent limitations are established by EPA or are based on water quality standards the request for a variance may be filed by the close of the public comment period under R317-8-6.5.

(6) Water Quality Related Effluent Limitations. A modification of requirements for achieving water quality-related effluent limitations may be requested no later than the close of the public comment period under R317-8-6.5 on the permit from which the modification is sought.

2.4 EXPEDITED VARIANCE PROCEDURES AND TIME EXTENSIONS. Notwithstanding the time requirements in R317-8-2.3, the Executive Secretary may notify a permit applicant before a draft permit is issued under R317-8-6.3 that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the Executive Secretary may require that the applicant, as a condition of consideration of any potential variance request, submit a request explaining how the requirements of R317-8-7 applicable to the variance have been met. The Executive Secretary may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under R317-8-2.3(2) may request an extension. The extension may be granted or denied at the discretion of the Executive Secretary. Extensions will be no more than six months in duration.

2.5 GENERAL PERMITS

(1) Coverage. The Executive Secretary may issue a general permit in accordance with the following:

(a) Area. The general permit will be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under Sections 208 and 303 of CWA;

2. City, county, or state political boundaries;

3. State highway systems;

4. Standard metropolitan statistical areas as defined by the U.S. Office of Management and Budget;

5. Urbanized areas as designated by the U.S. Bureau of the Census, consistent with the U.S. Office of Management and Budget;

6. Any other appropriate division or combination of boundaries as determined by the Executive Secretary.

(b) Sources. The general permit will be written to regulate, within the area described in R317-8-2.5(a), either;

1. Storm water point sources; or

2. A category of point sources other than storm water point sources, or a category of treatment works, treating domestic sewage, if the sources or treatment works treating domestic sewage all:

a. Involve the same or substantially similar types of operations;

b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices.

c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;

d. Require the same or similar monitoring; and

e. In the opinion of the Executive Secretary, are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-6.

(b) Authorization to discharge, or authorization to engage in sludge use and disposal practices.

1. Except as provided in paragraphs (2)(b)5. and (2)(b)6. of this section, discharges (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Executive Secretary a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (2)(b)5. of this section, contains a provision that a notice of intent is not required or the Executive Secretary notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (2)(b)6. of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of R-317-8-3.

2. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility of discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfill occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in R317-8-3.6(2), including a topographic map. All notices of intent shall be signed in accordance with R317-8-3.3.

3. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;

4. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance

with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use for disposal practice), in accordance with the permit either upon receipt of the notice of intent by the Executive Secretary, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Executive Secretary. Coverage may be terminated or revoked in accordance with paragraph (2)(c) of this section.

5. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Executive Secretary, be authorized to discharge under a general permit without submitting a notice of intent where the Executive Secretary finds that a notice of intent requirement would be inappropriate. In making such a finding, the Executive Secretary shall consider: the type of discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Executive Secretary shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

6. The Executive Secretary may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph R317-8-2.5(2)(c).

(c) Requiring an individual permit.

1. The Executive Secretary may require any person authorized by a general permit to apply for and obtain an individual UPDES permit. Any interested person may petition the Executive Secretary to take action under R317-8-2.4. Cases where an individual UPDES permit may be required include the following:

a. The discharge(s) is a significant contributor of pollutants. In making this determination, the Executive Secretary may consider the following factors:

i. The location of the discharge with respect to waters of the State;

ii. The size of the discharge;

iii. The quantity and nature of the pollutants discharged to waters of the State; and

iv. Other relevant factors;

b. The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general UPDES permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

d. Effluent limitation guidelines are promulgated for point sources covered by the general UPDES permit;

e. A Utah Water Quality Management Plan containing requirements applicable to such point sources is approved;

f. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practices covered by the general UPDES permit; or

2. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under R317-8-3.1 to the Executive Secretary with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the Executive Secretary in accordance with R317-8-6.5. If the reasons cited by the owner or operator are adequate to support the request, the Executive Secretary may issue an individual permit.

3. When an individual UPDES permit is issued to an owner or operator otherwise subject to a general UPDES permit, the applicability of the general permit to the individual UPDES permittee is automatically terminated on the effective date of the individual permit.

4. A source excluded from a general permit solely because he already has an individual permit may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

2.6 DISPOSAL OF POLLUTANTS INTO WELLS, INTO POTWS OR BY LAND APPLICATION.

(1) The Executive Secretary may issue UPDES permits to control the disposal of pollutants into wells when necessary to protect the public health and welfare, and to prevent the pollution of ground and surface waters.

(2) When part of a discharger's process wastewater is not being discharged into waters of the State (including groundwater) because it is disposed of into a well, into a POTW, or by land application, thereby reducing the flow or level of pollutants being discharged into waters of the State, applicable effluent standards and limitations for the discharge in a UPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the State and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in R317-8-2.6(2)(a), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater to be treated and discharged into waters of the State and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under R317-8-7.3 to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

This method may be algebraically expressed as: P=E x N/T

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the State and T is the total wastewater flow.

(3) R317-8-2.6(2) shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) R317-8-2.6(2) does not alter a dischargers obligation to meet any more stringent requirements established under R317-8-4.

2.7 VARIANCE REQUESTS BY POTWS. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under the following provision:

(1) Water Quality Based Effluent Limitation. A permit modification of the requirements for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under R317-8-6.5 on the permit for which the modification is sought.

(2) Delay in construction. An extension of a Federal statutory deadline based on delay in the construction of the POTW must have been requested on or before August 3, 1987.

2.8 DECISION ON VARIANCES

(1) The Executive Secretary may deny or forward to the Administrator (or his delegate) with a written concurrence, a completed request for:

(a) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(b) After consultation with the Regional Administrator, extensions based on the use of innovative technology; or

(c) Variances under R317-8-2.3(4) for thermal pollution.

(2) The Executive Secretary may deny or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(a) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(b) A variance based on the economic capability of the applicant;

(c) A variance based upon certain water quality factors (See CWA section 301(g)); or

(d) A variance based on water quality related effluent limitations.

(e) Except for information required by R317-8-3.1(4)(c) which shall be retained for a period of at least five years from the date the application is signed, applicants shall keep records of all data used to complete permit applications and any supplemental information for a period of at least three years from the date the application is signed.

R317-8-3. Application Requirements.

3.1 APPLYING FOR A UPDES PERMIT

(1) Application requirements

(a) Any person who is required to have a permit, including new applicants and permittees with expiring permits shall complete, sign, and submit an application to the Executive Secretary as described in this regulation and R317-8-2 Scope and Applicability. On the date of UPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a UPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR 122.6. For the purpose of this section the Executive Secretary will accept the information required under R317-8-3.5 for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(b) Any person who (1) discharges or proposes to discharge pollutants and (2) owns or operates a sludge-only facility and does not have an effective permit, shall submit a complete application to the Executive Secretary in accordance with this section and R317-8-6. A complete application shall include a BMP program, if necessary, under R317-8-4.2(10). The following are exceptions to the application requirements:

1. Persons covered by general permits under R317-8-4.2(10);

2. Discharges excluded under R317-8-2.1(2);

3. Users of a privately owned treatment works unless the Executive Secretary requires otherwise under R317-8-4.2(12).

(2) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Executive Secretary. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under R317-8-3.9(6)11 shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. See also R317-8-3.2 and R317-8-3.9(2)1.g. and 2.

(3) Who Applies. When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit.

(4) Duty to reapply.

(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Executive Secretary. The Executive Secretary shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that:

1. The Executive Secretary may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date; and

2. The Executive Secretary may grant permission to submit the information required by R317-8-3.5(7), (9) and (10) after the permit expiration date.

(c) All applicants for permits, other than POTWs, new sources, and sludge-only facilities must complete EPA Forms 1 and either 2B or 2C or 2F or equivalent State forms as directed by the Executive Secretary to apply under R317-8-3. Forms may be obtained from the Executive Secretary. In addition to any other applicable requirements in this section, all POTWs and other treatment works treating domestic sewage, including sludge-only facilities, must submit with their applications the information listed at 40 CFR 501.15(a)(2) within the time frames established in R317-8-3.1(7)(a) and (b).

(d) Continuation of expiring permits. The conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

2. The Executive Secretary, through no fault of the permittee, does not issue a new permit with an effective date under R317-8-6.11 on or before the expiration date of the previous permit.

3. Effect Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

4. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Executive Secretary may choose to do any or all of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under R317-8-6.3(2);

c. Issue a new permit under R317-8-6 with appropriate conditions; or

d. Take other actions authorized by the UPDES regulations.

(5) Completeness. The Executive Secretary will not issue a UPDES permit before receiving a complete application for a permit except for UPDES General Permits. A permit application is complete when the Executive Secretary receives an application form with any supplemental information which is completed to his or her satisfaction.

(6) Information requirements. All applicants for UPDES permits shall provide the following information to the Executive

Secretary, using the application form provided by the Executive Secretary.

(a) The activities being conducted which require the applicant to obtain UPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) From one (1) to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The operators name, address, telephone number, ownership status, and status as to Federal, State, private, public, or other entity.

(e) Whether the facility is located on Indian lands.

(f) A listing of all other relevant environmental permits, or construction approvals issued by the Executive Secretary or other state or federal permits.

(g) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(h) A brief description of the nature of the business.

(i) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to new source regulations promulgated by the Executive Secretary.

(7) Permits Under Section 19-5-107 of the Utah Water Quality Act.

(a) POTWs with currently effective UPDES permits shall submit the application information required by R317-8-3.1(4)(c) with the next application submitted in accordance with R317-8-3.1(4) of this section or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to the POTW's sludge use or disposal practice(s), whichever occurs first.

(b) Any other existing treatment works treating domestic sewage not covered in R317-8-3.1(7)(a) shall submit an application to the Executive Secretary within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practice(s) or upon request of the Executive Secretary prior to the promulgation of an applicable standard for sewage sludge use or disposal if the Executive Secretary determines that a permit is necessary to protect to public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(c) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the Executive Secretary at least 180 days prior to the date proposed for commencing operations.

(8) Recordkeeping. Except for information required by R317-8-3.1(7)(c) which shall be retained for a period of at least five years from the date the application is signed or longer as required by the Executive Secretary, applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this regulation for a period of at least three (3) years from the date the application is signed.

(9) Service of process. Every applicant and permittee shall provide the Executive Secretary an address for receipt of any legal paper for service of process. The last address provided to the Executive Secretary pursuant to this provision shall be the address at which the Executive Secretary may tender any legal notice, including but not limited to service of process in connection with any enforcement action. Service, whether by bond or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

(10) Application Forms. The State will use EPA-developed NPDES application forms or State equivalents in administering the UPDES program.

3.2 APPLICATION REQUIREMENTS FOR NEW SOURCES AND NEW DISCHARGES. New manufacturing, commercial, mining and silvicultural dischargers applying for UPDES permits (except for new discharges of facilities subject to the requirements of R317-8-3.5 or new discharges of storm water associated with industrial activity which are subject to R317-8-3.9(2)(a) except as provided by R317-8-3.9(2)(a)2, shall provide the following information to the Executive Secretary, using application forms provided by the Executive Secretary:

(1) Expected outfall location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) Discharge dates. The expected date of commencement of discharge.

(3) Flows, Sources of Pollution and Treatment Technologies

(a) Expected treatment of wastewater. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged.

(b) Line drawing. A line drawing of the water flow through the facility with a water balance as described in R317-8-3.5(2).

(c) Intermittent Flows. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).

(4) Production. If a new source performance standard or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard as required by R317-8-4.3(2)(b) for each of the first three years. Alternative estimates may also be submitted if production is likely to vary.

(5) Effluent Characteristics. The requirements in R317-8-3.5(7) that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of R317-8-4.3(7) are met. All levels (except for discharge flow, temperature and pH) must be estimated as concentration and as total mass.

(a) Each applicant must report estimated daily maximum, daily average and source of information for each outfall for the following pollutants or parameters. The Executive Secretary may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

1. Biochemical Oxygen Demand (BOD).
2. Chemical Oxygen Demand (COD).
3. Total Organic Carbon (TOC).
4. Total Suspended Solids (TSS).
5. Flow.
6. Ammonia (as N).
7. Temperature (winter and summer).
8. pH.

(b) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV, R317-8-3.12(4) (certain conventional and nonconventional pollutants).

(c) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

1. The pollutants listed in Table III, R317-8-3.12(3) (the toxic metals, in the discharge from any outfall: Total cyanide, and total phenols);

2. The organic toxic pollutants in R317-8-3.12(2) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(d) The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

1. 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

2. 2-(2,4,5-trichlorophenoxy) propanic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

3. 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);)

4. 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

5. 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

6. Hexachlorophene (HCP) (CAS #70-80-4);

(e) Each applicant must report any pollutants listed in Table V, R317-8-3.12(5) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(f) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of NPDES application Form 2c (see R317-8-3.5). However, the applicant need not complete those portions of Item V requiring tests which he has already performed and reported under the discharge monitoring requirements of his UPDES permit.

(6) Engineering Report. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge.

(7) Other information. Any optional information the permittee wishes to have considered.

(8) Certification. Signature of certifying official under R317-8-3.4.

3.3 CONFIDENTIALITY OF INFORMATION

(1) Any information submitted to the Executive Secretary pursuant to the UPDES regulations may be claimed as confidential by the person submitting the information. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Executive Secretary may make the information available to the public without further notice. If a claim is asserted, it will be treated according to the standards of 40 CFR Part 2.

(2) Information which includes effluent data and records required by UPDES application forms provided by the Executive Secretary under R317-8-3.1 may not be claimed as confidential.

(3) Information contained in UPDES permits may not be claimed as confidential.

3.4 SIGNATORIES TO PERMIT APPLICATIONS AND REPORTS

(1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) Reports. All reports required by permits and other information requested by the Executive Secretary under R317-8-3.9(3) shall be signed by a person described in subsection (1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section:

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and

(c) The written authorization is submitted to the Executive Secretary.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the Executive Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3.5 APPLICATION REQUIREMENTS FOR EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL DISCHARGERS

Existing manufacturing, commercial, mining, and

silvicultural dischargers applying for UPDES permits shall provide the following information to the Executive Secretary, using application forms provided by the Executive Secretary:

(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water.

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under R317-8-3.5. The water balance shall show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined, the applicant may provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water; and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms, (for example, "dye-making reactor," "distillation tower.") For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

(4) Intermittent flows. If any of the discharges described in R317-8-3.5(3) are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks.

(5) Maximum production levels. If an EPA effluent guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure shall reflect the actual production of the facility as required by R317-8-4.3(2).

(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection shall be provided, except information on storm water discharges which is to be provided as specified in R317-8-3.9. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR 136. When no particular analytical method is required the applicant may use any suitable method but must provide a description of the method. The Executive Secretary may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (c) and (d) of this subsection that an applicant shall provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine,, oil and grease, and or E. coli. For all other pollutants, twenty-four (24)-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, the Executive Secretary may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under R317-8-3.9(3) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Executive Secretary). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in R317-8-3.9(2)(a). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in R317-8-3.9 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, or E. coli, and fecal streptococcus. The Executive Secretary may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rainfall), protocols for collecting samples under 40 CFR 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.

(a) Every applicant shall report quantitative data for every outfall for the following pollutants:

1. Biochemical Oxygen Demand (BOD)
2. Chemical Oxygen Demand
3. Total Organic Carbon
4. Total Suspended Solids
5. Ammonia (as N)
6. Temperature (both winter and summer)
7. pH

(b) The Executive Secretary may waive the reporting requirements for one or more of the pollutants listed in R317-8-3.5(7)(a) if the applicant has demonstrated that the waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(c) Each applicant with processes in one or more primary industry category, listed in R317-8-3.11 of this regulation, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process

wastewater:

1. The organic toxic pollutants in the fractions designated in Table 1 of R317-8-3.12 for the applicant's industrial category or categories unless the applicant qualifies as a small business under R317-8-3.5(8). Table II of R317-8-3.12 of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

2. The pollutants listed in Table III of R317-8-3.12 (the toxic metals, cyanide, and total phenols).

(d) 1. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of R317-8-3.12 (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of R317-8-3.12 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (b) of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2.4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2.4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentration less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under R317-8-3.5(8) is not required to analyze for pollutants listed in Table II of R317-8-3.12 (the organic toxic pollutants).

(e) Each applicant shall indicate whether it knows or has reason to believe that any of the pollutants in R317-8-3.12(5) of this regulation, certain hazardous substances and asbestos are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data for the pollutant.

(f) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin(TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2.4.5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) Small business exemption. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in R317-8-3.5(7)(c) and (d) to submit quantitative data for the pollutants listed in R317-8-3.12(2), organic toxic pollutants:

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than $100,000 per year, in second quarter 1980 dollars.

(9) Used or manufactured toxics. The application shall include a listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Executive Secretary may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Executive Secretary has adequate information to issue the permit.

(10) Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(11) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by R317-8-3.5(7), the identity of each laboratory or firm and the analyses performed shall be included in the application.

(12) Additional information. In addition to the information reported on the application form, applicants shall provide to the Executive Secretary, upon request, other information as the Executive Secretary may reasonably be required to assess the discharges of the facility and to determine whether to issue a UPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

3.6 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) Permit required. All concentrated animal feeding operations have a duty to seek coverage under a UPDES permit, as described in 40 CFR 122.23(d).

(2) Application requirements for new and existing concentrated animal feeding operations. New and existing concentrated animal feeding operations (defined in 40 CFR 122.23) shall provide the following information to the Executive Secretary, using the application form provided by the Executive Secretary:

(a) The name of the owner or operator;

(b) The facility location and mailing addresses;

(c) Latitude and longitude of the production area (entrance to production area);

(d) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area;

(e) Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

(f) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage(tons/gallons);

(g) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

(h) Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons);

(i) Estimated amounts of manure, litter and process wastewater transferred to other persons per year (tons/gallons); and

(j) For CAFOs that seek permit coverage after December 31, 2006, certification that a Comprehensive Nutrient Management Plan (CNMP) has been completed and will be

implemented upon the date of permit coverage.

(3) Technical standards for nutrient management. UPDES permits issued to concentrated animal feeding operations shall contain technical standards for nutrient management as outlined in 40 CFR 412.4. The technical standards for nutrient management shall conform with the standards contained in the Utah Natural Resources Conservation Service Conservation Practice Standard Code 590 Nutrient Management.

3.7 CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES

(1) Permit required. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in R317-8-3.7(5) or which the Executive Secretary designates under R317-8-3.7(3).

(3) Case-by-Case designation of concentrated aquatic animal production facilities.

(a) The Executive Secretary may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Executive Secretary will consider the following factors:

1. The location and quality of the receiving waters of the State;

2. The holding, feeding, and production capacities of the facility;

3. The quantity and nature of the pollutants reaching waters of the State; and

4. Other relevant factors.

(b) A permit application will not be required from a concentrated aquatic animal production facility designated under this section until the Executive Secretary or authorized representative has conducted an on-site inspection of the facility and has determined that the facility could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated aquatic animal production facilities shall provide the following information to the Executive Secretary using the application form provided:

(a) The maximum daily and average monthly flow from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the source of intake water.

(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of food fed during that month.

(5) Criteria for determining a concentrated aquatic animal production facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this regulation if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water aquatic animals. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

3. Cold water aquatic animals include, but are not limited to the Salmonidae family of fish.

(b) Warm water aquatic animals. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

1. Closed ponds which discharge only during periods of excess runoff; or

2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000) pounds) of aquatic animals per year.

3. "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrachidae and Cyprinidae families of fish.

3.8 AQUACULTURE PROJECTS

(1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the UPDES permit program.

(2) Definitions.

(a) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(b) "Designated project areas" means the portions of the waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

3.9 STORM WATER DISCHARGES

(1) Permit requirement.

(a) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:

1. A discharge with respect to which a permit has been issued prior to February 4, 1987;

2. A discharge associated with industrial activity;

3. A discharge from a large municipal separate storm sewer system;

4. A discharge from a medium municipal separate storm sewer system;

5. A discharge which the Executive Secretary determines contributes to a violation of water quality standard or is a significant contributor of pollutants to waters of the State. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under this section or agricultural storm water runoff which is exempted from the definition of point source. The Executive Secretary may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Executive Secretary may consider the following factors:

a. The location of the discharge with respect to waters of the State;

b. The size of the discharge;

c. The quantity and nature of the pollutants discharged to waters of the State; and

d. Other relevant factors.

(b) The Executive Secretary may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, by product, or waste products

located on the site of such operations.

(c) Large and medium municipal separate storm sewer systems.

1. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

2. The Executive Secretary may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or individual discharges from municipal separate storm sewers within the system.

3. The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

a. Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

b. Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

4. A regional authority may be responsible for submitting a permit application under the following guidelines:

i. The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due;

ii. The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

iii. Each of the operators of municipal separate storm sewers within the systems described in R317-8-1.6(4)(a),(b) and (c) or R317-8-1.6(7)(a),(b), and (c), that are under the purview of the designated regional authority, shall comply with the application requirements of R317-8-3.9(3).

5. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Executive Secretary may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

6. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

7. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(d) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of R317-8-3.9(2), an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing UPDES permit number.

(e) Other municipal separate storm sewers. The Executive Secretary may issue permits for municipal separate storm sewers that are designated under R317-8-3.9(1)(a)(5) on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(f) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Executive Secretary, in his discretion, may issue: a single UPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the State; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

1. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the State, with each discharger to the non-municipal conveyance a co-permittee to that permit.

2. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

3. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(g) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain UPDES permits and that are not subject to the provisions of this section.

(h) Small municipal, small construction, TMDL pollutants of concern, and significant contributors of pollution.

1. On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (1)(a) of this section to obtain a permit, operators shall be required to obtain a UPDES permit only if:

a. The discharge is from a small MS4 required to be regulated pursuant to 40 CFR 122.32 (see R317-8-1.10(11)).

b. The discharge is a storm water discharge associated with small construction activity pursuant to paragraph R317-8-3.9(6)(e).

c. The Executive Secretary or authorized representative determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

d. The Executive Secretary or authorized representative determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

2. Operators of small MS4s designated pursuant to paragraphs (1)(h)1.a., (1)(h)1.c., and (1)(h)1.d. of this section shall seek coverage under an UPDES permit in accordance with 40 CFR 122.33, 122.34, and 122.35 (see R317-8-1.10(12) through R317-8-1.10(14). Operators of non-municipal sources designated pursuant to paragraph (1)(h)1.b; (1)(h)1.c; and (1)(h)1.d of this section shall seek coverage under a UPDES permitin accordance with paragraph (2)(a) of this section.

3. Operators of storm water discharges designated pursuant to paragraphs (1)(h)1.c. and (1)(h)1.d. of this section shall apply to the Executive Secretary for a permit within 180 days of receipt of notice, unless permission for a later date is

granted by the Executive Secretary (see R317-8-3.6(3)).

(2) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.

(a) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Executive Secretary is evaluating under R317-8-3.9(1)(a)5 and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph R317-8-3.9(2)(b) of this section, shall submit an UPDES application in accordance with R317-8-3.1 and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Forms 1 and 2F. Applicants for discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2C, and 2F. Applicants for new sources or new discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2D, and 2F.

1. Except as provided in R317-8-3.9(2)(a)2, 3, and 4, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

a. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall; each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

b. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

c. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a UPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

d. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

e. Quantitative data based on samples collected during storm events and collected in accordance with R317-8-3.1 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

i. Any pollutant limited in an effluent guideline to which the facility is subject;

ii. Any pollutant listed in the facility's UPDES permit for its process wastewater (if the facility is operating under an existing UPDES permit);

iii. Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

iv. Any information on the discharge required under R317-8-3.5(7)(d) and (e);

v. Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

vi. The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than O.1 inch rainfall) storm event (in hours);

f. Operators of a discharge which is composed entirely of storm water are exempt from R317-8-3.5(2),(3),(4),(5),(7)(a),(c), and (f); and

g. Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in R317-8-3.9(2)(a)1e instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in R317-8-3.5(2)(a)1e within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the UPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of R317-8-3.2(3)(b) and (c) and 3.2(5).

2. An operator of an existing or new storm water discharge that is associated with industrial activity solely under R317-8-3.9(6)(c)11 of this section or is associated with small construction activity solely under paragraph R317-8-3.9(6)(e) of this section, is exempt from the requirements of R317-8-3.5 and R317-8-3.9(2)(a)1. Such operator shall provide a narrative description of:

a. The location (including a map) and the nature of the construction activity;

b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

c. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

d. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

f. The name of the receiving water.

3. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration,

production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with R317-8-3.9(2)(a)1, unless the facility:

a. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987;

b. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

c. Contributes to a violation of a water quality standard.

4. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

5. Applicants shall provide such other information the Executive Secretary may reasonably require to determine whether to issue a permit and may require any facility subject to R317-8-3.9(2)(a)2 to comply with R317-8-3.9(2)(a)1.

(3) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Executive Secretary under R317-8-3.9(1)(a)5, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under R317-8-3.9(1)(a)5 shall include:

(a) Part 1. Part 1 of the application shall consist of:

1. General information. The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

2. Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in R317-8-3.9(3)(b)1, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

3. Source identification.

a. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

b. A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

i. The location of known municipal storm sewer system outfalls discharging to waters of the State;

ii. A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agriculture and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, and estimate of an average runoff coefficient shall be provided;

iii. The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

iv. The location and the permit number of any known discharge to the municipal storm sewer that has been issued a UPDES permit;

v. The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

vi. The identification of publicly owned parks, recreational areas, and other open lands.

4. Discharge characterization.

a. Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

b. Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

c. A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

i. Assessed and reported in CWA 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

ii. Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

iii. Listed in Utah Nonpoint Source Assessments that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

iv. Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

v. Recognized by the applicant as highly valued or sensitive waters;

vi. Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

vii. Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

d. Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable

methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (for any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

i. A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlayed on a map of the municipal storm sewer system, creating a series of cells;

ii. All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

iii. Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

iv. Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

v. Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or building in the area; history of the area; and land use types;

vi. For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

vii. Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in R317-8-3.9(3)(a)4di-vi, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

e. Characterization plan. Information and a proposed program to meet the requirements of R317-8-3.9(3)(b)3. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under R317-8-3.9(3)(b)3.a, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfall or field screening points for such sampling should reflect water quality concerns to the extent practicable.

5. Management programs.

a. A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

b. A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

6. Financial resources. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(b) Part 2. Part 2 of the application shall consist of:

1. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

a. Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

c. Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

d. Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

e. Require compliance with conditions in ordinances, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

2. Source identification. The location of any major outfall that discharges to waters of the State that was not reported under R317-8-3.9(3)(a)3b 1. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

3. Characterization data. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent in accordance with R317-8-3.5(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

a. Quantitative data from representative outfalls designated by the Executive Secretary (based on information received in

part 1 of the application, the Executive Secretary shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Executive Secretary shall designate all outfalls) developed as follows:

i. For each outfall or field screening point designated, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with R317-8-3.5(7) (the Executive Secretary may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

ii. A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

iii. For samples collected and described under R317-8-3.9(3)(b)3.a i and ii, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (other toxic pollutants metals, cyanide, and total phenols) of R317-8-3.13, and for the following pollutants:

Total suspended solids (TSS)
Total dissolved solids (TDS)
COD
BOD5
Oil and grease
E. coli
Fecal streptococcus
pH
Total Kjeldahl nitrogen
Nitrate plus nitrite
Dissolved phosphorus
Total ammonia plus organic nitrogen
Total phosphorus

iv. Additional limited quantitative data required by the Executive Secretary for determining permit conditions (the Executive Secretary may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation and other parameters necessary to insure representativeness);

b. Estimates of the annual pollutant load of the cumulative discharges to waters of the State from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the State from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

c. A proposed schedule to provide estimates for each major outfall identified in either R317-8-3.9(3)(b)2 or R317-8-3.9(3)(a)3b 1 of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under R317-8-3.9(3)(b)3a of this section; and

d. A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

4. Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Executive Secretary when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

a. A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

i. A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

ii. A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in R317-8-3.9(3)(b)4d;

iii. A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

iv. A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

v. A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under R317-8-3.9(3)(b)4c); and

vi. A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

b. A description of a program, including a schedule, to detect and remove illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

i. A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water

discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the State);

ii. A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

iii. A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as E. coli, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

iv. A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

v. A description of a program to promote, publicize and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

vi. A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

vii. A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

c. A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

i. Identify priorities and procedures for inspection and establishing and implementing control measures for such discharges;

ii. Describe a monitoring program for storm water discharges associated with the industrial facilities identified in R317-8-3.9(b)4c to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing UPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under R317-8-3.5(7)(d) 1, 2, and (e).

d. A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

i. A description of procedures for site planning which incorporate consideration of potential water quality impacts;

ii. A description of requirements for nonstructural and structural best management practices;

iii. A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

iv. A description of appropriate educational and training measures for construction site operators.

v. Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

vi. Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under R317-8-3.9(8)(b) 3 and 4. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

vii. Where more than one legal entity submits an application, the application shall contain a description of the rules and responsibilities of each legal entity and procedures to ensure effective coordination.

viii. Where requirements under R317-8-3.9(3)(a)4e, 3.9(3)(b)3b, and 3.9(3)(b)4 are not practicable or are not applicable, the Executive Secretary may exclude any operator of a discharge from a municipal separate storm sewer which is designated under R317-8-3.9(1)(a)5, R317-8-1.6(4)(b) or R317-8-1.6(7)(b) from such requirements. The Executive Secretary shall not exclude the operator of a discharge from a municipal separate storm sewer located in incorporated places with populations greater than 100,000 and less than 250,000 according to the latest decennial census by Bureau of Census; or located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the latest decennial census by the Bureau of Census, from any of the permit application requirements except where authorized.

(4) Application deadlines. Any operator of a point source required to obtain a permit under R317-8-3.9(1)(a) that does not have an effective UPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(a) Storm water discharges associated with industrial activities.

1. Except as provided in paragraph (4)(a)2. Of this section, for any storm water discharge associated with industrial activity identified in paragraphs R317-8-3.9(6)(d)1 through 11 of this section that is not authorized by a storm water general permit, a permit application made pursuant to paragraph R317-8-3.9(2) of this section must be submitted to the Executive Secretary by October 1, 1992;

2. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, the permit application must be submitted to the Executive Secretary by March 10, 2003.

(b) For any discharge from a large municipal separate storm sewer system:

1. Part 1 of the application shall be submitted to the Executive Secretary by November 18, 1991;

2. Based on information received in the part 1 application the Executive Secretary will approve or deny a sampling plan

within 90 days after receiving the part 1 application;

3. Part 2 of the application shall be submitted to the Executive Secretary by November 16, 1992.

(c) For any discharge from a medium municipal separate storm sewer system;

1. Part 1 of the application shall be submitted to the Executive Secretary by May 18, 1992.

2. Based on information received in the part 1 application the Executive Secretary will approve or deny a sampling plan within 90 days after receiving the part 1 application.

3. Part 2 of the application shall be submitted to the Executive Secretary by May 17, 1993.

(d) A permit application shall be submitted to the Executive Secretary within 180 days of notice, unless permission for a later date is granted by the Executive Secretary for;

1. A storm water discharge which the Executive Secretary determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

2. A storm water discharge subject to R317-8-3.9(2)(a)5.

(e) Facilities with existing UPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth in R317-8-3.9(4)(a).

(f) For any storm water discharge associated with small construction activity identified in paragraph R317-8-3.9(6)(e)1. of this section, see R317-8-3.1(2). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(g) For any discharge from a regulated small MS4, the permit application made under 40 CFR 122.33 (see R317-8-1.10(12)) must be submitted to the Executive Secretary by:

1. March 10, 2003 if designated under 40 CFR 122.32 (a)(1) (see R317-8-1.10(11)) unless your MS4 serves a jurisdiction with a population under 10,000 and the Executive Secretary has established a phasing schedule under 40 CFR 123.35 (d)(3); or

2. Within 180 days of notice, unless the Executive Secretary grants a later date, if designated under 40 CFR 122.32(a)(2) and 40 CFR 122.33(c)(2) (see R317-8-1.10(11) and (12)).

(5) Petitions.

(a) Any operator of a municipal separate storm sewer system may petition the Executive Secretary to require a separate UPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the Executive Secretary to require a UPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

(c) The owner or operator of a municipal separate storm sewer system may petition the Executive Secretary to reduce the Census estimates of the population served by such separate system to account for storm water discharge to combined sewers that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the UPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the Executive Secretary for the designation of a large, medium, or small municipal separate storm sewer system as defined by R317-8-1.6(4), (7), and (14).

(e) The Executive Secretary shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of the petitions to designate a small MS4 in which case the Executive Secretary shall make a final determination on the petition within 180 days after its receipt.

(6) Provisions Applicable to Storm Water Definitions.

(a) The Executive Secretary may designate a municipal separate storm sewer system as part of a large system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers described under R317-8-1.6(4)(a) or (b). In making the determination under R317-8-1.6(4)(b) the Executive Secretary may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(3)(a);

3. The quantity and nature of pollutants discharged to waters of the State;

4. The nature of the receiving waters; and

5. Other relevant factors; or

The Executive Secretary may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(4).

(b) The Executive Secretary may designate a municipal separate storm sewer system as part of a medium system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers describer under R317-8-1.6(7)(a) or (b). In making the determination under R317-8-1.6(7)(b) the Executive Secretary may consider the following factors;

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(7)(a);

3. The quantity and nature of pollutants discharged to waters of the State;

4. The nature of the receiving waters; or

5. Other relevant factors; or

The Executive Secretary may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(7)(a), (b), and (c).

(c) Storm water discharges associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program under this part R317-8. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste water (as defined in 40 CFR 401);

sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purpose of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (d)1. through(11.) of this section) include those facilities designated under the provisions of paragraph (1)(a)5. of this section.

d. The following categories of facilities are considered to be engaging in "industrial activity" for the purposes of this section (see R317-8-3.9(1)(a)2 and (6)(c)).

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards, or toxic pollutant effluent standards under 40 CFR subchapter N except facilities with toxic pollutant effluent standards which are exempted under category R317-8-3.9(6)(c)11;

2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under R317-8-3.9(6)(c) 1 through 7 or R317-8-3.9(6)(c) 9 through 11 are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with requirements for disposal of sewage sludge.

10. Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

11. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25.

(e) Storm water discharge associated with small construction activity means the discharge of storm water from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Executive Secretary may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

a. The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), page 21-64, dated January 1997. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street S.W., Washington, DC. 20460, or the Office of Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An Operator must certify to the Executive Secretary that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

b. Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-

stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Executive Secretary that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the Executive Secretary based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

(7) Conditional exclusion for "no exposure" of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snow melt and/or runoff, and the discharger satisfies the conditions in paragraphs (7)(a) through (7)(d) of this section. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snow melt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(a) Qualification. To qualify for this exclusion, the operator of the discharge must:

1. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff:

2. Complete and sign (according to R317-8-3.3) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (7)(b) of this section:

3. Submit the signed certification to the Executive Secretary once every five years;

4. Allow the Executive Secretary or authorized representative to inspect the facility to determine compliance with the "no exposure" conditions;

5. Allow the Executive Secretary or authorized representative to make any "no exposure" inspection reports available to the public upon request; and

6. For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(b) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

1. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

2. Adequately maintained vehicles used in material handling; and

3. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(c) Limitations

1. Storm water discharges from construction activities identified in paragraphs R317-8-3.9(6)(d)10. and R317-8-3.9(6)(e) are not eligible for this conditional exclusion.

2. This conditional exclusion from the requirement for an UPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

3. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge become subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

4. Notwithstanding the provisions of this paragraph, the Executive Secretary retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(d) Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the Executive Secretary in determining if the facility qualifies for the no exposure exclusion:

1. The legal name, address and phone number of the discharger (see R317-8-3.1(3)).

2. The facility name and address, the county name and the latitude and longitude where the facility is located;

3. The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

a. Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

b. Materials or residuals on the ground or in storm water inlets from spills/leaks;

c. Materials or products from past industrial activity;

d. Materials handling equipment (except adequately maintained vehicles);

e. Materials or products during loading/unloading or transporting activities;

f. Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge to pollutants);

g. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

h. Materials or products handled/stored on roads or railways owned or maintained by the discharger;

i. Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

j. Application or disposal of process wastewater (unless otherwise permitted); and

k. Particulate matter or visible deposits or residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.

4. All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of R317-8-3.3 "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from UPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (7)(b) of this section). I understand that I am obligated to submit a no exposure certification form once every five years to the Executive Secretary and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the

Executive Secretary or authorized representative or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and make such inspection reports publicly available upon request. I understand that I must obtain coverage under a UPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(8) The Executive Secretary may designate small MS4's other than those described in 40 CFR 122.32(a)(1) (see also R317-8-1.10(11)) to be covered under the UPDES storm water permit program, and require a UPDES storm water permit. Designations of this kind will be based on whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts; and shall apply to any small MS4 located outside of an urbanized area serving a population density of at least 1,000 people per square mile and a population of at least 10,000.

(a) Criteria used in designation may include;

1. discharge(s) to sensitive waters,
2. areas with high growth or growth potential,
3. areas with a high population density,
4. areas that are contiguous to an urbanized area,
5. small MS4's that cause a significant contribution of pollutants to waters of the State,
6. small MS4's that do not have effective programs to protect water quality by other programs, or
7. other appropriate criteria.

(b) Permits for designated MS4's under this paragraph shall be under the same requirements as small MS4's designated under 40 CFR 122.32(a)(1) (see also R317-8-1.10(11)).

3.10 SILVICULTURAL ACTIVITIES

(1) Permit requirements. Silvicultural point sources, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

(b) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(c) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

3.11 APPLICATION REQUIREMENTS FOR NEW AND EXISTING POTWS.

(1) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Executive Secretary.

(a) All POTWs with design influent flows equal to or greater than one million gallons per day; and

(b) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(2) In addition to the POTWs listed in R317-8-3.11(1)(a) and (b) the Executive Secretary may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(b) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; or

(e) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Executive Secretary determines could cause or contribute to adverse water quality impacts.

(3) For POTWs required under R317-8-3.11(1) or (2) to conduct toxicity testing. POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last UPDES permit reissuance or permit modification under R317-8-5.6(1) whichever occurred later. Prior to conducting toxicity testing, permittees shall contact the Executive Secretary regarding the testing methodology to be used.

(4) All POTWs with approved pretreatment programs shall provide to the Executive Secretary a written technical evaluation of the need to revise local limits.

3.12 PRIMARY INDUSTRY CATEGORIES. Any UPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the UPDES regulations and Sections 301(b)(2)(A),(C),(D),(E) and (F) of the CWA whether or not applicable effluent limitations guidelines have been promulgated.

(1) Adhesives and sealants
(2) Aluminum forming
(3) Auto and other laundries
(4) Battery manufacturing
(5) Coal mining
(6) Coil coating
(7) Copper forming
(8) Electrical and electronic components
(9) Electroplating
(10) Explosives manufacturing
(11) Foundries
(12) Gum and wood chemicals
(13) Inorganic chemicals manufacturing
(14) Iron and steel manufacturing
(15) Leather tanning and finishing
(16) Mechanical products manufacturing
(17) Nonferrous metals manufacturing
(18) Ore mining
(19) Organic chemicals manufacturing
(20) Paint and ink formulation
(21) Pesticides
(22) Petroleum refining
(23) Pharmaceutical preparations

(24) Photographic equipment and supplies
(25) Plastics processing
(26) Plastic and synthetic materials manufacturing
(27) Porcelain enameling
(28) Printing and publishing
(29) Pulp and paper mills
(30) Rubber processing
(31) Soap and detergent manufacturing
(32) Steam electric power plants
(33) Textile mills
(34) Timber products processing

3.13 UPDES PERMIT APPLICATION TESTING REQUIREMENTS

TABLE I
Testing Requirements for Organic Toxic Pollutants
by Industrial Category for Existing Dischargers

	GC/MS fraction (1)			
Industrial category	Volatile	Acid	Base/	Pesticide
Adhesives and sealants	(*)	(*)	(*)	...
Aluminum Forming	(*)	(*)	(*)	...
Auto and Other Laundry	(*)	(*)	(*)	(*)
Battery Manufacturing	(*)	...	(*)	...
Coal Mining	(*)	(*)	(*)	(*)
Coil Coating	(*)	(*)	(*)	...
Copper Forming	(*)	(*)	(*)	...
Electric and Electronic Components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	...
Explosives Manufacturing	...	(*)	(*)	...
Foundries	(*)	(*)	(*)	...
Gum and Wood Chemicals	(*)	(*)	(*)	...
Inorganic Chemicals Manufacturing	(*)	(*)	(*)	...
Iron and Steel Manufacturing	(*)	(*)	(*)	...
Leather Tanning and Finishing	(*)	(*)	(*)	(*)
Mechanical Products Manufacturing	(*)	(*)	(*)	(*)
Nonferrous Metals Manufacturing	(*)	(*)	(*)	(*)
Ore Mining	(*)	(*)	(*)	(*)
Organic Chemicals Manufacturing	(*)	(*)	(*)	(*)
Paint and Ink Formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum Refining	(*)	(*)	(*)	(*)
Pharmaceutical Preparations	(*)	(*)	(*)	(*)
Photographic Equipment and Supplies	(*)	(*)	(*)	(*)
Plastic and Synthetic Materials Manufacturing	(*)	(*)	(*)	(*)
Plastic Processing	(*)	...	...	...
Porcelain Enameling	(*)	...	(*)	(*)
Printing and Publishing	(*)	(*)	(*)	(*)
Pulp and Paper Mills	(*)	(*)	(*)	(*)
Rubber Processing	(*)	(*)	(*)	...
Soap and Detergent Manufacturing	(*)	(*)	(*)	...
Steam Electric Power Plant	(*)	(*)	(*)	...
Textile Mills	(*)	(*)	(*)	(*)
Timber Products Processing	(*)	(*)	(*)	(*)

(1) The toxic pollutants in each fraction are listed in Table II.
* Testing required.

TABLE II
Organic Toxic Pollutants in Each of Four Fractions in Analysis
by Gas Chromatography/Mass Spectroscopy (GC/MS)

(a) VOLATILES

1V acrolein
2V acrylonitrile
3V benzene
4V bis (chloromethyl) ether
5V bromoform
6V carbon tetrachloride
7V chlorobenzene
8V chlorodibromomethane
9V chloroethane
10V 2-chloroethylvinyl ether
11V chloroform
12V dichlorobromomethane
13V dichlorodifluoromethane
14V 1,1-dichloroethane
15V 1,2-dichloroethane
16V 1,1-dichloroehtylene
17V 1,2-dichloropropane
18V 1,2-dichloropropylene
19V ethylbenzene
20V metyl bromide
21V methyl chloride
22V methoylene chloride
23V 1,1,2,2-tetrachloroethane
24V tetrachloroethylene
25V toluene
26V 1,2-trans-dichloroethylene
27V 1,1,1-trichloroethane
28V 1,1,2-trichloroethane
29V trichloroethylene
30V trichlorofluoromethane
31V vinyl chloride

(b) ACID COMPOUNDS

1A 2-chlorophenol
2A 2,4-dichlorophenol
3A 2.4-dimethylphenol
4A 4,6-dinitro-o-cresol
5A 2,4-dinitrophenol
6A 2-nitrophenol
7A 4-nitrophenol
8A p-chloro-m-cresol
9A pentachlorophenol
10A phenol
11A 2,4,6-trichlorophenol

(c) BASE/NEUTRAL

1B acenaphthene
2B acenaphthylene
3B anthracene
4B benzidine
5B benzo(a)anthracene
6B benzo(a)pyrene
7B 3,4-benzofluoranthene
8B benzo(ghi)perylene
9B benzo(k)fluoranthene
10B bis(2-chloroethoxy)methane
11B bis(2-chloroethyl)ether
12B bis(2-chloroethyl)ether
13B bis(2-ethylhexyl)phthalate
14B 4-bromophenyl phenyl ether
15B butylbenzyl phthalate
16B 2-chloronaphthanlene
17B 4-chlorophenyl phenyl ether
18B chrysene
19B dibenxo(a,h)anthracene
20B 1,2-dichlorobenzen
21B 1,3-dichlorobenzene
22B 1,4-dichlorobenzene
23B 3,3-dichlorobenzidine
24B diethyl phthalate
25B dimethyl phtahalate
26B di-n-butyl phthalate
27B 2,4-dinitrotoluene
28B 2,6-dinitrotoluene
29B di-n-octyl phthalate
30B 1,2-diphenylhydrazine (as azobenzene)
31B fluoranthene
32B fluorene
33B hexachlorobenzene
34B hexachlorobutadiene
35B hexachlorocyclopentadiene
36B hexachloroethane
37B indeno(1,2,3-cd)pyrene
38B isophorone
39B naphthalene
40B nitrobenzene
41B N-nitrosodimethylamine
42B N-nitrosodi-n-propylamine
43B N-nitrosodiphenylamine
44B phenanthrene
45B pyrene
46B 1,2,4-trichlorobenzene

(d) PESTICIDES

1P aldrin
2P alpha-BHC
3P beta-BHC
4P gamma-BHC
5P delta-BHC
6P chlordane
7P 4,4'-DDT
8P 4,4'-DDE
10P dieldrin
11P alpha-endosulfan
12P beta-endosulfan
13P endosulfan sulfate
14P endrin
15P endrin aldehyde
16P heptachlor
17P heptachlor epoxide
18P PCB-1242
19P PCB-1254
20P PCB-1221
21P PCB-1232
22P PCB-1248
23P PCB-1260
24P PCB-1016
25P toxaphene

TABLE III
Other Toxic Pollutants; Metals, Cyanide, and Total Phenols

(a) Antimony, Total
(b) Arsenic, Total
(c) Beryllium, total
(d) Cadmium, Total
(e) Chromium, Total
(f) Copper, Total
(g) Lead, Total
(h) Mercury, Total
(i) Nickel, Total
(j) Selenium, Total
(k) Silver, Total
(l) Thallium, Total
(m) Zinc, Total
(n) Cyanide, Total
(o) Phenols, Total

TABLE IV
Conventional and Nonconventional Pollutants Required to be Tested
by Existing Dischargers if Expected to be Present

(a) Bromide
(b) Chlorine, Total Residual
(c) Color
(d) E. coli
(e) Fluoride
(f) Nitrate-Nitrite
(g) Nitrogen, total Organic
(h) Oil and Grease
(i) Phosphorus, Total
(j) Radioactivity
(k) Sulfate
(l) Sulfide
(m) Sulfite
(n) Surfactants
(o) Aluminum, Total
(p) Barium, Total
(q) Boron, Total
(r) Cobalt, Total
(s) Iron, Total
(t) Magnesium, Total
(u) Molybdenum, Total
(v) Manganese, Total
(w) Tin, Total
(x) Titanium, Total

TABLE V
28 Toxic Pollutants and Hazardous Substances Required to be Identified by Existing Dischargers if Expected to be Present

(a) Toxic Pollutants - Asbestos
(b) Hazardous Substances

1. Acetaldhyde
2. Allyl alcohol
3. Allyl chloride
4. Amyl acetate
5. Aniline
6. Benzonitrile
7. Benzyl chloride
8. Butyl acetate
9. Butylamine
10. Captan
11. Carbaryl
12. Carbofuran
13. Carbon disulfide
14. Chlorpyrifos
15. Coumaphos
16. Cresol
17. Crotonaldehyde
18. Cyclohexane
19. 2,4-D(2.4-Dichlorophenoxy acetic acid)
20. Diazinon
21. Dicamba
22. Dichlobenil
23. Dichlone
24. 2,2-Dichloropropionic acid
25. Dichlorvos
26. Diethyl amine
27. Dimethyl amine
28. Dintrobenzene
29. Diquat
30. Disulfoton
31. Diuron
32. Epichloropydrin
33. Ethanolamine
34. Ethion
35. Ethylene diamine
36. Ethylene dibromide
37. Formaldehyde
38. Furfural
39. Guthion
40. Isoprene
41. Isopropanolamine dodecylbenzenesulfonate
42. Kelthane
43. Kepone
44. Malathion
45. Mercaptodimethur
46. Methoxychlor
47. Methyl mercaptan
48. Methyl methacrylate
49. Methyl parathion
50. Mevinphos
51. Mexacarbate
52. Monoethyl amine
53. Monomethyl amine
54. Naled
55. Npathenic acid
56. Nitrotouene
57. Parathion
58. Phenolsulfanante
59. Phosgene
60. Propargite
61. Propylene oxide
62. Pyrethrins
63. Quinoline
64. Resorconol
65. Strontium
66. Strychnine
67. Styrene
68. 2,4,5-T(2,4,5-Trichlorophenoxy acetic acid)
69. TDE(Tetrachlorodiphenylethane)
70. 2,4,5-TP (2-(2,4,5 - trichlorophenoxy)propanic acid)
71. Trichlorofan
72. Triethanolamine dodecylbenzenesulfonate
73. Triethylamine
74. Trimethylamine
75. Uranium
76. Vanadium
77. Vinyl Acetate
78. Xylene
79. Xylenol
80. Zirconium

3.14 APPLICATION REQUIREMENTS OF R317-8-3.8(7)(E) SUSPENDED FOR CERTAIN CATEGORIES AND SUBCATEGORIES OF PRIMARY INDUSTRIES. The application requirements of R317-8-3.5 (7)(c) are suspended for the following categories and subcategories of the primary industries listed in R317-8-3.11:

(1) Coal mines.

(2) Testing and reporting for all four organic fractions in the Greige Mills subcategory of the Textile Mills Industry and testing and reporting for the pesticide fraction in all other

subcategories of this industrial category.

(3) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four fractions in all other subcategories of this industrial category.

(4) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Testing and reporting for the pesticide fraction in the Tall Oil Resin Subcategory and Rosin-Based Derivatives Subcategory of the Gum and Wood Chemicals industry and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

(6) Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

(7) Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

(8) Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories of the Pulp and Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink Dissolving Kraft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semi-Chemical and Nonintegrated Fine Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving, Sulfite Pulp, Groundwood-Fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated-Tissue Papers.

(9) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

R317-8-4. Permit Conditions.

4.1 CONDITIONS APPLICABLE TO ALL UPDES PERMITS. The following conditions apply to all UPDES permits. Additional conditions applicable to UPDES permits are in R317-8-4.1(15). All conditions applicable shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. In addition to conditions required in all UPDES permits, the Executive Secretary will establish conditions as required on a case-by-case basis under R317-8-4.2 and R317-8-5.

(1) Duty to Comply.

(a) General requirement. The permittee must comply with all conditions of the UPDES permit. Any permit noncompliance is a violation of the Utah Water Quality Act, as amended and is grounds for enforcement action; permit termination, revocation and reissuance or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions for toxic pollutants and with standards for sewage sludge use or disposal established by the State within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement (40 CFR, 129).

2. The Utah Water Quality Act, in 19-5-115, provides that any person who violates the Act, or any permit, rule, or order adopted under it is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or with gross negligence violates the Act, or any permit, rule or order adopted under it is subject to a fine of not more than $25,000 per day of violation. Any person convicted under 19-5-115 a second time shall be punished by a fine not exceeding $50,000 per day.

(2) Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit as required in R317-8-3.1.

(3) Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. (Upon reduction, loss, or failure of the treatment facility, the permittee, to the extent necessary to maintain compliance with the permit, shall control production of all discharges until the facility is restored or an alternative method of treatment is provided.)

(4) Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the UPDES permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property Rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to Provide Information. The permittee shall furnish to the Executive Secretary, within a reasonable time, any information which the Executive Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with this permit. The permittee shall also furnish to the Executive Secretary, upon request, copies of records required to be kept by the permit.

(9) Inspection and Entry. The permittee shall allow the Executive Secretary, or an authorized representative, including an authorized contractor acting as a representative of the Executive Secretary) upon the presentation of credentials and other documents as may be required by law to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times for the purposes of assuring UPDES program compliance or as otherwise authorized by the Utah Water Quality Act any substances or parameters, or practices at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and

records of all data used to complete the application for the permit for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Executive Secretary at any time. Records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, shall be retained for a period of at least five years or longer as required by State promulgated standards for sewage sludge use and disposal.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) and times analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR 136 or in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use or disposal, unless other test procedures, approved by EPA under 40 CFR 136, have been specified in the permit.

(e) Section 19-5-115(3) of the Utah Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be punished by a fine not exceeding $10,000 or imprisonment for not more than six months or by both.

(11) Signatory Requirement. All applications, reports, or information submitted to the Executive Secretary shall be signed and certified as indicated in R317-8-3.4. The Utah Water Quality Act provides that any person who knowingly makes any false statements, representations, or certifications in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months or by both.

(12) Reporting Requirements.

(a) Planned changes. The permittee shall give notice to the Executive Secretary as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in R317-8-8; or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit nor to notification requirements under R317-8-4.1(15).

3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(b) Anticipated Noncompliance. The permittee shall give advance notice to the Executive Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the Executive Secretary. The Executive Secretary may require modification on and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Utah Water Quality Act, as amended. (In some cases, modification, revocation and reissuance is mandatory.)

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Executive Secretary for reporting results of monitoring of sludge use or disposal practices.

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or the in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use and disposal, or as specified in the permit according to procedures approved by EPA, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Executive Secretary.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

(e) Compliance Schedules. Reports of compliance or noncompliance with, or any progress report on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen days following each scheduled date.

(f) Twenty-Four Hour Reporting. The permittee shall (orally) report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. (The report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance.) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. (The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.) The following shall be included as events which must be reported within twenty-four hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in R317-8-4.1(13).

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Executive Secretary in the permit to be reported within twenty-four hours, as indicated in R317-8-4.2(7). The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(g) Other NonCompliance. The permittee shall report all instances of noncompliance not reported under R317-8-4.1(12)(d), (e), and (f) at the time monitoring reports are submitted. The reports shall contain the information listed in R317-8-4.1(12)(f).

(h) Other Information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in its permit application or in any report to the Executive Secretary, it shall promptly submit such facts or information.

(13) Occurrence of a Bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical

damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to R317-8-4.1(13)(c) or (d).

(c) Prohibition of Bypass.

1. Bypass is prohibited, and the Executive Secretary may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of human life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance, and

c. The permittee submitted notices as required under R317-8-4.1(13)(d).

2. The Executive Secretary may approve an anticipated bypass, after considering its adverse effects, if the Executive Secretary determines that it will meet the three conditions listed in R317-8-4.1(13)(c) a, b, and c.

(d) Notice.

1. Anticipated bypass. Except as provided in R317-8-4.1(13)(b) and R317-8-4.1(13)(d)2, if the permittee knows in advance of the need for a bypass, it shall submit prior notice, at least 90 days before the date of bypass. The prior notice shall include the following unless otherwise waived by the Executive Secretary:

a. Evaluation of alternatives to the bypass, including cost-benefit analysis containing an assessment of anticipated resource damages;

b. A specific bypass plan describing the work to be performed including scheduled dates and times. The permittee must notify the Executive Secretary in advance of any changes to the bypass schedule;

c. Description of specific measures to be taken to minimize environmental and public health impacts;

d. A notification plan sufficient to alert all downstream users, the public and others reasonably expected to be impacted by the bypass;

e. A water quality assessment plan to include sufficient monitoring of the receiving water before, during and following the bypass to enable evaluation of public health risks and environmental impacts; and

f. Any additional information requested by the Executive Secretary.

2. Emergency Bypass. Where ninety days advance notice is not possible, the permittee must notify the Executive Secretary, and the Director of the Department of Natural Resources, as soon as it becomes aware of the need to bypass and provide to the Executive Secretary the information in R317-8-4.1(13)(d)1.a. through f. to the extent practicable.

3. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass to the Executive Secretary as required in R317-8-4.1(12)(f). The permittee shall also immediately notify the Director of the Department of Natural Resources , the public and downstream users and shall implement measures to minimize impacts to public health and the environment to the extent practicable.

(14) Occurrence of an Upset.

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of R317-8-4.1(14)(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

(c) Conditions Necessary for a Demonstration of Upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

2. The permitted facility was at the time being properly operated; and

3. The permittee submitted notice of the upset as required in R317-8-4.1(12)(f) (twenty-four hour notice).

4. The permittee complied with any remedial measures required under R317-8-4.1(4).

(d) Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional Conditions Applicable to Specified Categories of UPDES Permits. The following conditions, in addition to others set forth in these regulations apply to all UPDES permits within the categories specified below:

(a) Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under R317-8-4.1(12),(13), and (14), any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the Executive Secretary as soon as it knows or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4 dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(7) or (10).

d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

2. That any activity has occurred or will occur which would result in any discharge on a non-routine or infrequent basis of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 ug/l).

b. One milligram per liter (1 mg/l) for antimony.

c. Ten times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(9).

d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

(b) POTWs. POTWs shall provide adequate notice to the Executive Secretary of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the UPDES regulations if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW; and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been determined by the Executive Secretary under R317-8-3.9(1)(a)5 of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

1. The status of implementing the components of the storm water management program that are established as permit conditions;

2. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with R317-8-3.9(3)(b)3; and

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under R317-8-3.9(3)(b)4 and 3.9(3)(b)5;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs;

7. Identification of water quality improvements or degradation.

(d) Concentrated animal feeding operations (CAFOs). Any permit issued to a CAFO must include:

1. Requirements to develop and implement a Comprehensive Nutrient Management Plan (CNMP). At a minimum, a CNMP must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Operations defined as CAFOs before (insert rule effective date here) and permitted prior to December 31, 2006 must have their CNMPs developed and implemented by December 31, 2006. CAFOs that seek to obtain coverage under a permit after December 31, 2006 and all operations defined as CAFOs after (insert rule effective date here) must have a CNMP developed and implemented upon the date of permit coverage. The CNMP must, to the extent applicable:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

c. Ensure that clean water is diverted, as appropriate, from the production area;

d. Prevent direct contact of confined animals with waters of the United States;

e. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;

g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater;

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described in paragraphs (d)(1)a. through (d)(1)h. of this section; and

j. Include documentation that the CNMP was prepared or approved by a certified nutrient management planner.

2. Recordkeeping requirements.

a. The permittee must create, maintain for five years, and make available to the Director, upon request, the following records:

(i) All applicable records identified pursuant paragraph (d)(1)i. of this section;

(ii) In addition, all CAFOs subject to 40 CFR part 412 must comply with record keeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c).

b. A copy of the CAFO's site-specific CNMP must be maintained on site and made available to the Director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 CFR part 412. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the Director. The annual report must include:

a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

c. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/ gallons);

d. Total number of acres for land application covered by the CNMP developed in accordance with paragraph (d)(1) of this section;

e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;

f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and

g. A statement that the current version of the CAFO's CNMP was developed or approved by a certified nutrient management planner.

4.2 ESTABLISHING PERMIT CONDITIONS. For the purposes of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final

administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in R317-8-5.6. New or reissued permits, and to the extent allowed under R317-8-5.6, modified or revoked and reissued permits shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under R317-8-4.1 each UPDES permit will include conditions on a case by case basis to provide for and ensure compliance with all applicable Utah statutory and regulatory requirements and the following, as applicable:

(1) Technology-based effluent limitations and standards, based on effluent limitations and standards promulgated under Section 19-5-104 of the Utah Water Quality Act or new source performance standards promulgated under Section 19-5-104 of the Utah Water Quality Act, on case-by-case effluent limitations, or a combination of the two in accordance with R317-8-7.1.

(2) Toxic Effluent Standards and Other Effluent Limitations. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is promulgated under Section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Executive Secretary shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener Clause. For any discharger within a primary industry category, as listed in R317-8-3.11, requirements will be incorporated as follows:

(a) On or before June 30, 1981:

1. If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations.

(b) On or after the statutory deadline set forth in Section 301(b)(2) (A), (C), and (E) of CWA, any permit issued shall include effluent limitations to meet the requirements of Section 301(b)(2) (A), (C), (D), (E), (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by R317-8-4.2(3)(a)1.

(c) The Executive Secretary shall promptly modify or revoke and reissue any permit containing the clause required under R317-8-4.2(3)(a)1 to incorporate an applicable effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(d) For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the Executive Secretary shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal adopted by the State. The Executive Secretary may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitation guidelines or standards will be included, when necessary to:

(a) Achieve water quality standards established under the Utah Water Quality Act, as amended and regulations promulgated pursuant thereto, including State narrative criteria for water quality.

1. Permit limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Executive Secretary determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

2. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the Executive Secretary shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

3. When the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

4. When the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit will contain effluent limits for whole effluent toxicity.

5. Except as provided in R317-8-4.2, when the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit will contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Executive Secretary determines in the fact sheet or statement of basis of the UPDES permit, using the procedures in R317-8-4.2(4)(2), that chemical specific limits for effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

6. Where the State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard the Executive Secretary will establish effluent limits using one or more of the following options:

a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the Executive Secretary determines will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criteria supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents:

b. Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 307(a) of the CWA, supplemented where necessary by other relevant information; or

c. Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitations;

(ii) The fact sheet as required by .4 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(iv) The permit contains a reopener clause allowing the Executive Secretary to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

7. When developing water quality-based effluent limits under this paragraph the Executive Secretary shall ensure that:

a. The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(b) Attain or maintain a specified water quality through water quality related effluent limits established under the Utah Water Quality Act;

(c) Conform to applicable water quality requirements when the discharge affects a state other than Utah;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or regulations.

(e) Ensure consistency with the requirements of any Utah Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under R317-8-7.3.

(5) Technology-based Controls for Toxic Pollutants. Limitations established under R317-8-4.2 (1), (2), or (4) to control pollutants meeting the criteria listed in R317-8-4.2(5)(a) will be included in the permit, if applicable. Limitations will be established in accordance with R317-8-4.2(5)(6). An explanation of the development of these limitations will be included in the fact sheet under R317-8-6.4.

(a) Limitations will control all toxic pollutants which:

1. The Executive Secretary determines, based on information reported in a permit application under R317-8-3.5(7) and (10), or in a notification under R317-8-4.1(15)(a) of this regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3)(a),(b) and (c).

2. The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection will be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the Executive Secretary, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by R317-8-7.1(3)(a), (b) and (c).

(6) Notification Level. A "notification level" which exceeds the notification level of R317-8-4.1(15) upon a petition from the permittee or on the Executive Secretary's initiative will be incorporated as a permit condition, if applicable. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3).

(7) Twenty-Four (24) Hour Reporting. Pollutants for which the permittee will report violations of maximum daily discharge limitations under R317-8-4.1(12)(f) shall be listed in the permit. This list will include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring Requirements. The permit will incorporate, as applicable in addition to R317-8-4.1(12) the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor;

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall;

3. Other measurements as appropriate, including pollutants in internal waste streams under R317-8-4.3(8); pollutants in intake water for net limitations under R317-8-4.3(7); frequency and rate of discharge for noncontinuous discharges under R317-8-4.3(5); pollutants subject to notification requirements under R317-8-4.1(15)(a); and pollutants in sewage sludge or other monitoring as specified in State rules for sludge use or disposal or as determined to be necessary pursuant to R317-8-2.1.

4. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(b) Except as provided in paragrahs (8)(d) and (8)(e) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be a specified in R317-8-1.10(9) (where applicable), but in no case less than once a year.

(c) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(d) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (c)above) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require;

1. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

2. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

3. Such report and certification be signed in accordance with R317-8-3.4; and

4. Permits for storm water discharges associated with industrial activity from inactivite mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(e) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under R317-8-4.1(12)(a),(d),(e), and (f) at least annually.

(9) Pretreatment Program for POTWs. If applicable to the facility the permit will incorporate as a permit condition, requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the UPDES regulations.

(b) Submit a local program when required by and in accordance with R317-8-8.10 to assure compliance with pretreatment standards to the extent applicable in the UPDES regulations. The local program will be incorporated into the permit as described in R317-8-8.10. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(c) For POTWs which are "sludge-only facilities", a requirement to develop a pretreatment program under R317-8-8 when the Executive Secretary determines that a pretreatment program is necessary to assure compliance with State rules governing sludge use or disposal.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Authorized under the Utah Water Quality Act as amended and the UPDES rule for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible, or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Utah Water Quality Act, as amended.

(11) Reissued Permits.

(a) Except as provided in R317-8-4.2(11)(b), when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under R317-8-5.6.

(b) In the case of effluent limitations established on the basis of Section 19-5-104 of the Utah Water Quality Act, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated by EPA under section 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(c) Exceptions--A permit with respect to which R317-8-4.2(11)(b) applies may be renewed, reissued or modified to contain a less stringent effluent limitation applicable to a pollutant, if--

1. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation; and

2. a. Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

b. The Executive Secretary determines that technical mistakes or mistaken interpretations of law were made in issuing the permit;

3. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

4. The permittee has received a permit modification under R317-8-5.6; or

5. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(d). Limitations. In no event may a permit with respect to which R317-8-4.2(11)(b) applies be renewed, reissued or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of the water quality standard applicable to such waters.

(12) Privately Owned Treatment Works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this regulation will be imposed as applicable. Alternatively, the Executive Secretary may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Executive Secretary's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits or to require separate applications, and the basis for that decision will be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants. Any conditions imposed in grants or loans made by the Executive Secretary to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations will be required as applicable.

(14) Sewage Sludge. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which rules have been established, in accordance with any applicable regulations.

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit will be conditioned to require that the discharge comply with any applicable federal regulation promulgated by the Secretary of the department in which the Coast Guard is operating, and such condition will establish specifications for safe transportation, handling, carriage, and storage of pollutants, if applicable.

(16) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with R317-8-6.9 will be included.

(17) State standards for sewage sludge use or disposal. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under Section 19-5-104 of the Utah Water Quality Act, and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Executive Secretary may initiate proceedings under these rules to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

(18) Qualifying State or local programs.

(a) For storm water discharges associated with small construction activity identified in R317-8-3.9(6)(e), the Executive Secretary may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. Where a qualifying State or local program does not include one or more of the elements in this paragraph then the Executive Secretary must include those elements as conditions in the permit. A qualifying State or local erosion and sediment control program is one that

includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

3. Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions of appropriate control measures, copies of approved State, local requirements, maintenance procedures, inspections procedures, and identification of non-storm water discharges); and

4. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(b) For storm water discharges from construction activity identified in R317-8-3.9(6)(d)10., the Executive Secretary may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. A qualifying State or local erosion and sediment control program is one that includes the elements listed in paragraph (18)(a) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgement of the permit writer.

4.3 CALCULATING UPDES PERMIT CONDITIONS. The following provisions will be used to calculate terms and conditions of the UPDES permit.

(1) Outfalls and Discharge Points. All permit effluent limitations, standards, and prohibitions will be established for each outfall or discharge point of the permitted facility, except as otherwise provided under R317-8-4.2(10) with BMPs where limitations are infeasible; and under R317-8-4.3(8), limitations on internal waste streams.

(2) Production-Based Limitations.

(a) In the case of POTWs, permit effluent limitations, standards, or prohibitions will be calculated based on design flow.

(b) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production, or other measure of operation, will be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production will correspond to the time period of the calculated permit limitations; for example, monthly production will be used to calculate average monthly discharge limitations. The Executive Secretary may include a condition establishing alternate permit standards or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(c) For the automotive manufacturing industry only, the Executive Secretary may establish a condition under R317-8-4.3(2)(b)2 if the applicant satisfactorily demonstrates to the Executive Secretary at the time the application is submitted that its actual production, as indicated in R317-8-4.3(2)(b)1, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(d) If the Executive Secretary establishes permit conditions under and R317-8-4.3(2)(c):

1. The permit shall require the permittee to notify the Executive Secretary at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

2. The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Executive Secretary under R317-8-4.3(2)(d)1, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

3. The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal will be expressed in terms of the total recoverable metal, that is, the sum of the dissolved and suspended fractions of the metal, unless:

(a) An applicable effluent standard or limitation has been promulgated by EPA and specifies the limitation for the metal in the dissolved or valent form; or total form; or

(b) In establishing permit limitations on a case-by-case basis under R317-8-7, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Utah Water Quality Act; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form.

(4) Continuous Discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable will be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Non-continuous Discharges. Discharges which are not continuous, as defined in R317-8-1.5(7), shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency; for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass; for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge for example, not to exceed 2 kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure, (for example, shall not contain at any time more than 0.05 mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge).

(6) Mass Limitations.

(a) All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If, in establishing permit limitations on a case-by-case basis under R317-8-7.1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation; (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute

for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit will require the permittee to comply with both limitations.

(7) Pollutants in Intake Water.

(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in effluent guidelines and standards provide that they shall be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or used to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Executive Secretary may waive this requirement if he finds that no environmental degradation will result.

(e) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(8) Internal Waste Streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by R317-8-4.2(8) shall also be applied to the internal waste streams.

(b) Limits on internal waste streams will be imposed only when the fact sheet under R317-8-6.4 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under 10 meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) Disposal of Pollutants Into Wells, Into POTWs, or by Land Application. Permit limitations and standards shall be calculated as provided in R317-8-2.6.

(10) Secondary Treatment Information. Permit conditions that involve secondary treatment will be written as provided in 40 CFR Part 133, except that Utah effluent limits for secondary treatment will be used.

R317-8-5. Permit Provisions.

5.1 DURATION OF PERMITS

(1) UPDES permits shall be effective for a fixed term not to exceed 5 years.

(2) Except as provided in R317-8-3.1(4) (d), the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(3) The Executive Secretary may issue any permit for a duration that is less than the full allowable term under this section.

(4) A permit that would expire on or after the Federal statutory deadline set forth in section 301(b)(2) (A), (C), and (E) of the CWA, may be issued to expire after the deadline if the permit includes effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

(5) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

5.2 SCHEDULES OF COMPLIANCE

(1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Utah Water Quality Act, as amended, and regulations promulgated pursuant thereto.

(a) Time for compliance. Any schedules of compliance under this section will require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(b) The first UPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing discharges, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(c) Interim dates. Except as provided in R317-8-5.2(2)(a)2 if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule will set forth interim requirements and the dates for their achievement.

1. The time between interim dates will not exceed one (1) year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates will not exceed six months.

2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit will specify interim dates, (but not more than one interim date per calendar year per project phase or segment), for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) Reporting. The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the Executive Secretary in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(2) Alternative Schedules of Compliance. A UPDES permit applicant or permittee may cease conducting regulated activities (by termination of direct discharge for UPDES sources), rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted

activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit will contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the Executive Secretary may issue or modify a permit to contain two schedules as follows:

1. Both schedules will contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One schedule shall lead to timely compliance no later than the statutory deadline in the CWA;

3. The second schedule will lead to cessation of regulated activities by a date which will ensure timely compliance with the applicable requirements no later than the deadline specified in R317-8-7;

4. Each permit containing two schedules will include a requirement that after the permittee has made a final decision under R317-8-5.2(2)(c), it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Executive Secretary, such as a resolution of the Board of Directors of a corporation.

5.3 REQUIREMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS. All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in R317-8-4.1 and 4.2. Reporting shall be no less frequent than specified in the above section.

5.4 EFFECT OF A PERMIT

(1) Except for any toxic effluent standards and prohibitions included in R317-8-4.1(1)(b) and any standards adopted by the State for sewage sludge use or disposal, compliance with a UPDES permit during its term constitutes compliance, for purposes of enforcement, with the UPDES program. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R317-8-5.6 and 5.7.

(2) The issuance of a permit does not convey any property rights or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(4) Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage use or disposal under the UPDES program.

5.5 TRANSFER OF PERMITS

(1) Transfers by Modification. Except as provided in R317-8-5.5(2) a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under R317-8-5.6 or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the UPDES regulations.

(2) Automatic Transfers. As an alternative to transfers under subsection (1) of this section, any UPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the Executive Secretary at least thirty (30) days in advance of the proposed transfer date in R317-8-5.5(2)(b).

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(c) The Executive Secretary does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under R317-8-5.6(3). If this notice is not received, the transfer is effective on the date specified in the agreement under R317-8-5.5(2)(b).

5.6 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMIT

The Executive Secretary may determine whether or not one or more of the causes, listed in R317-8-5.6(1) and (2) for modification or revocation and reissuance or both, exist. If cause exists, the Executive Secretary may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section, the Executive Secretary shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in R317-8-5.6(3) for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the procedures in R317-8-6 must be followed.

(1) Causes for Modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees to revocation and reissuance as well as modification of a permit.

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, such alterations may justify the application of revised permit conditions which are different or absent in the existing permit.

(b) Information. Information received by the Executive Secretary regarding permitted activities may show cause for modification. UPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, (except for revised regulations, guidance or test methods) and would have justified application of different conditions at the time of permit issuance. In addition, the applicant must show that the information would have justified the application of different permit conditions at the time of issuance. For UPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New Regulations. If the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued permits may be modified during their terms for this case only as follows:

1. For promulgation of amended standards or regulations, when:

a. The permit condition requested to be modified was based on promulgated effluent limitation guidelines or

promulgated water quality standards; or the Secondary Treatment Regulations; and

b. EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based or has approved the Executive Secretary's action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with R317-8-6.1 within ninety (90) days after the amendment, revision or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with R317-8-6.2 within ninety (90) days of judicial remand.

(d) Compliance Schedules. A permit may be modified if the Executive Secretary determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case will a UPDES compliance schedule be modified to extend beyond an applicable statutory deadline in R317-8-7.

(e) In addition the Executive Secretary may modify a permit:

1. When the permittee has filed a request for a variance under R317-8-2.3, R317-8-2.7 or for "fundamentally different factors" within the time specified in R317-8-3 or R317-8-7.7(8)a (and the Executive Secretary processes the request under the applicable provisions).

2. When required to incorporate an applicable toxic effluent standard or prohibition under R317-8-4.2(2).

3. When required by the "reopener" conditions in a permit, which are established in the permit under R317-8-4.2(3) for toxic effluent limitations and standards for sewage sludge use or disposal.

4. Upon request of a permittee who qualifies for effluent limitations on a net basis under R317-8-4.3(8).

5. When a discharger is no longer eligible for net limitations, as provided in R317-8-4.3(8).

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(2)(c).

8. To establish a "notification level" as provided in R317-8-4.2(6).

9. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility in the case of the POTW which has received a grant from EPA of 100% of the cost to modify or replace the facilities. In no case will the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

10. Upon failure of the Executive Secretary to notify an affected state whose waters may be affected by a discharge from Utah.

11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

12. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

13. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

(2) Causes for Modification or Revocation and Reissuance. The following are causes to modify or alternatively revoke or reissue a permit:

(a) Cause exists for termination under R317-8-5.7 and the Executive Secretary determines that modification or revocation and reissuance is appropriate.

(b) The Executive Secretary has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the Executive Secretary may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of R317-8-6. Any permit modification not processed as a minor modification under this section must be made for cause and with a Section R317-8-6 draft permit and public notice as required under this section. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(d) Allow for a change in ownership or operational control of a facility where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Executive Secretary;

(e) Change the construction schedule for a discharger which is a new source. No such change shall affect a disclosure obligation to have all pollution control equipment installed and in operation prior to discharge; or

(f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in R317-8-8.10 (or a modification thereto that has been approved in accordance with the procedures in R317-8-8.16 as enforceable conditions of the POTW's permits).

5.7 TERMINATION OF PERMIT

(1) The following are causes for terminating a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time;

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(d) When there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit; for example, plant closure or termination of discharge by connection to a POTW.

(2) The Executive Secretary will follow the applicable procedures of R317-8-6.2 in terminating UPDES permits under this section.

R317-8-6. Review Procedures.

6.1 REVIEW OF THE APPLICATION

(1) Any person who requires a permit under the UPDES program shall complete, sign and submit to the Executive Secretary an application for the permit as required under R317-8-3.1. Applications are not required for UPDES general permits. (However, operators who elect to be covered by a general permit shall submit written notification to the Executive Secretary at such time as the Executive Secretary indicates in R317-8-6.3)

(2) The Executive Secretary will not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by R317-8-3.1.

(3) Permit applications must comply with the signature and certification requirements of R317-8-3.1.

(4) Each application submitted by a UPDES new source or UPDES new discharger should be reviewed for completeness by the Executive Secretary within thirty (30) days of its receipt. Each application for a UPDES permit submitted by an existing source or sludge-only facility will be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the Executive Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Executive Secretary shall list the information necessary to make the application complete. When the application is for an existing source or sludge-only facility, the Executive Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Executive Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Executive Secretary may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the Utah Water Quality Act, as amended and regulations promulgated pursuant thereto.

(6) If the Executive Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant will be notified and a date scheduled.

(7) The effective date of an application is the date on which the Executive Secretary notified the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major facility new discharger, the Executive Secretary shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the Executive Secretary intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing;

(d) Issue a final permit; and

6.2 REVIEW PROCEDURES FOR PERMIT MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS

(1) Permits may only be modified, revoked and reissued, or terminated for the reasons specified in R317-8-5.6. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Executive Secretary's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Executive Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or adjudicatory proceeding.

(3) If the Executive Secretary tentatively decides to modify or revoke and reissue a permit under R317-8-5.6, he or she shall prepare a draft permit under R317-8-6.3 incorporating the proposed changes. The Executive Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Executive Secretary shall require the submission of a new application.

(a) In a permit modification under .2, only those conditions to be modified will be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under .2, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as defined in R317-8-5.6(3) are not subject to the requirements of .2.

(4) If the Executive Secretary tentatively decides to terminate a permit under R317-8-5.7, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under R317-8-6.3.

6.3 DRAFT PERMITS

(1) Once an application is complete, the Executive Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the Executive Secretary tentatively decides to deny the permit application, then he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the Executive Secretary's final decision (under R317-8-6.11) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under R317-8-6.3(4).

(3) If the Executive Secretary tentatively decides to issue a UPDES general permit, he or she shall prepare a draft general permit in accordance with R317-8-6.3(4).

(4) If the Executive Secretary decides to prepare a draft permit he or she shall prepare a draft permit that contains the following information:

(a) All conditions under R317-8-4.1;

(b) All compliance schedules under R317-8-5.2;

(c) All monitoring requirements under R317-8-5.3;

(d) Effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under R317-8-3, 8-4, 8-5, 8-6, and 8-7 and all variances that are to be included.

(5) All draft permits prepared under this section shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The Executive Secretary will give notice of opportunity for a public hearing, issue a final decision and respond to comments. A request for an adjudicatory proceeding may be made pursuant to R317-9 following the issuance of a final decision.

(6) Statement of Basis. A statement of basis shall be

prepared for every draft permit for which a fact sheet is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

6.4 FACT SHEETS

(1) A fact sheet shall be prepared for every draft permit for a major UPDES facility or activity, for every UPDES general permit, for every UPDES draft permit that incorporates a variance or requires an explanation under R317-8-6.4(4), for every Class I Sludge Management Facility, for every draft permit that includes a sewage sludge land application plan and for every draft permit which the Executive Secretary finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Executive Secretary shall send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The type and quantity of wastes, fluids or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period and the address where comments will be received;

2. Procedures for requesting a public hearing and the nature of that hearing; and

3. Any other procedures by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

(3) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, or standards for sewage sludge use and disposal, including a citation to the applicable effluent limitation guideline or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(4)(a) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

1. Limitations to control toxic pollutants under R317-8-4.2(5);

2. Limitations on internal waste streams under R317-8-4.3(8);

3. Limitations on indicator pollutant;

4. Limitations set on a case-by-case basis under R317-8-7.1(3)(b) or (c).

(b) For every permit to be issued to a treatment works owned by a person other than the State or a municipality, an explanation of the Executive Secretary's decision on regulation of users under R317-8-4.2(12).

(5) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

(6) For permits that include a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit.

(7) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

6.5 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD

(1) Scope.

(a) The Executive Secretary will give public notice that the following actions have occurred:

1. A permit application has been tentatively denied under R317-8-6.3(2); or

2. A draft permit has been prepared under R317-8-6.3(4);

3. A public hearing has been scheduled under R317-8-6.7; and

4. A UPDES new source determination has been made in accordance with the definition in R317-8-1.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under .2. Written notice of the denial will be given to the requester and to the permittee.

(c) Public notices may describe more than one permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under R317-8-6.5(1) will allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(3) Methods. Public notice of activities described in R317-8-6.5(1)(a) will be given by the following methods:

(a) By mailing a copy of a notice to the following persons (Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.):

1. The applicant, except for UPDES general permittees, and Region VIII, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Utah Historic Society and other appropriate government authorities, including any affected states;

3. The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service.

4. Any user identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The Executive Secretary may update the mailing list from time to time by requesting written indication of continued interest from those listed. The name of any person who fails to respond to such a request may be deleted from the list.

6. Any unit of local government having jurisdiction over the area where the facility is proposed to be located and each State agency having any authority under State law with respect to construction or operation of such facility.

7. Any other agency which the Executive Secretary knows

has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Federal Clean Air Act, NPDES, 404, or sludge management permit).

(b) For major permits, UPDES general permits, and permits that include sewage sludge and application plans, the Executive Secretary will publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Utah law; and

(d) Any other method reasonably determined to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices issued under this part shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of UPDES draft general permits under R317-8-2.5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for UPDES general permits when there is no application;

4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, statement of basis or fact sheet, and the application; and

5. A brief description of the comment procedures and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. For UPDES permits only (including those for sludge-only facilities), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

7. Any additional information considered necessary or appropriate.

(b) Public notices for public hearings. In addition to the general public notice described in .5(4) the public notice for a permit hearing under R317-8-6.7 will contain the following information:

1. Reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing;

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under R317-8-2.3(4). In addition to the information required under R317-8-6.5(4)(a) public notice of a UPDES draft permit for a discharge when a R317-8-2.3(4) request has been filed will include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under R317-8-4.2(1) and a brief description, including a quantitative statement of the thermal effluent limitations; and

2. A statement that a R317-8-2.3(4) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

3. If the applicant has filed an early screening request under R317-8-7.4(4) for a variance, a statement that the applicant has submitted such a plan.

(5) In addition to the general public notice described in .5(4) all persons identified in .5(3)(a)1-4 will be mailed a copy of the fact sheet, the permit application and the draft permit.

6.6 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS

During the public comment period provided under R317-8-6.5, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and shall be answered as provided in R317-8-6.12.

6.7 PUBLIC HEARINGS

(1) The Executive Secretary shall hold a public hearing when he or she finds on the basis of request(s), a significant degree of public interest in draft permits. The Executive Secretary also may hold a public hearing at his or her discretion whenever a hearing might clarify one or more issues involved in the permit decision.

(2) Public notice of the hearing will be given as specified in R317-8-6.5.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R317-8-6.5 will automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

6.8 OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION DURING THE PUBLIC COMMENT PERIOD

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Executive Secretary's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under R317-8-6.5. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative records in the same proceeding or consist of state or federal statutes and regulations, EPA or the Executive Secretary's documents of general applicability, or other generally available reference materials. Persons making comment shall make supporting material not already included in the administrative record available to the Executive Secretary. Additional time shall be granted under R317-8-6.5 to the extent that a person desiring to comment who requests additional time demonstrates need for such time. Nothing in this section shall be construed to prevent any person aggrieved by a final permit decision from filing a request for agency action under R317-9.

6.9 CONDITIONS REQUESTED BY THE CORPS OF ENGINEERS AND OTHER GOVERNMENT AGENCIES

(1) If, during the comment period for a UPDES draft permit, the District Engineer of the Corps of Engineers advises the Executive Secretary in writing that anchorage and navigation of the waters of the State would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Executive Secretary that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of

anchorage or navigation, then the Executive Secretary shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers and may not be made through the procedures provided in this regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures or the Corps of Engineers, those conditions shall be considered stayed in the UPDES permit for the duration of that stay.

(2) If, during the comment period, the U.S. Fish and Wildlife Service or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Executive Secretary in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Executive Secretary may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Utah Water Quality Act, as amended, and of CWA.

(3) In appropriate cases the Executive Secretary may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis or fact sheet, or the draft permit.

6.10 REOPENING OF THE PUBLIC COMMENT PERIOD

(1) The Executive Secretary may order the public comment period reopened if the procedures of this section could expedite the decision making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Executive Secretary's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date not less than sixty days after public notice under paragraph (2) of this section, set by the Executive Secretary. Thereafter, any person may file a written response to the material filed by any other person, by a date not less than twenty days after the date set for filing of the material, set by the Executive Secretary.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of this section shall apply.

(3) On his own motion or on the request of any person, the Executive Secretary may direct that the requirements of paragraph (1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give persons desiring to comment a reasonable opportunity to comply with the requirements of this section. Persons desiring to comment may request longer comment periods and they shall be granted under R317-8-6.5 to the extent they appear necessary.

(5) If any data information or arguments submitted during the public comment period, including information or arguments required under R317-8-6.8, appear to raise substantial new questions concerning a permit, the Executive Secretary may take one or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under R317-8-6.3;

(b) Prepare a revised statement of basis under R317-8-6.3(6) a fact sheet or revised fact sheet under R317-8-6.4 and reopen the comment period under R317-8-6.10; or

(c) Reopen or extend the comment period under R317-8-6.5 to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under R317-8-6.5 shall define the scope of the reopening.

(7) For UPDES permits, the Executive Secretary may also, in the circumstances described above, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in paragraph (5) of this section.

(8) Public notice of any of the above actions shall be issued under R317-8-6.5.

6.11 ISSUANCE AND EFFECTIVE DATE OF PERMIT

After the close of the public comment period under R317-8-6.5, the Executive Secretary will issue a final permit decision. The Executive Secretary will notify the applicant and each person who has submitted written comments or requested notice of that decision. The notice shall include reference to the procedures for contesting the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

6.12 RESPONSE TO COMMENTS

(1) At the time that any final permit decision is issued under R317-8-6.11, the Executive Secretary shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The response will fully consider all comments resulting from any hearing conducted under this regulation.

(c) The response to the comments shall be available to the public.

R317-8-7. Criteria and Standards.

7.1 CRITERIA AND STANDARDS FOR TECHNOLOGY-BASED TREATMENT REQUIREMENTS

(1) Purpose and scope. This section establishes criteria and standards for the imposition of technology-based treatment requirements and represents the minimum level of control that must be imposed in a UPDES permit. Permits will contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:

(a) For POTW's effluent limitations based upon:

1. Utah secondary treatment from date of permit issuance; and

2. The best practicable waste treatment technology from date of permit issuance.

(b) For dischargers other than POTWs, except as otherwise provided, effluent limitations requiring:

1. The best practicable control technology currently available (BPT) --

a. For effluent limitations promulgated after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case basis based on Best Professional Judgment (BPJ) in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than May 31, 1989;

c. For all other BPT effluent limitations compliance is required from the date of permit issuance.

2. For conventional pollutants the best conventional pollutant control technology (BCT) --

a. For effluent limitations promulgated under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case (BPJ) basis in a permit issued after February 4, 1987 compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989;

c. For all other BCT effluent limitations compliance is required from the date of permit issuance.

3. For all toxic pollutants referred to in Committee Print No. 95-30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT) --

a. For effluent limitations established under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For permits issued on a case-by-case (BPJ) basis after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under Section 304(b)of the CWA and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

4. For all toxic pollutants other than those listed on Committee Print No. 95-30, effluent limitations based on BAT --

a. For effluent limitations promulgated under Section 304(b) of the CWA, compliance is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

5. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT --

a. For effluent limitations promulgated under section 304(b), compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations compliance is required as expeditiously as practicable but in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

(2) Variances and Extensions.

(a) The following variance from technology-based treatment requirements may be applied for under R317-8-2 for dischargers other than POTWs:

1. Economic variance from BAT, as indicated in R317-8-2.3(2);

2. Section 301(g) water quality related variance from BAT;

3. Thermal variance from BPT, BCT and BAT, under R317-8-7.4. may be authorized.

(b) An extension of the BPT deadline may be applied for under R317-8-2.3(3) for dischargers other than POTW's, for use of innovative technology. Compliance extensions may not extend beyond July 1, 1987.

(3) Methods of imposing technology-based treatment requirements in permits. Technology-based treatment requirements may be imposed through one of the following three methods:

(a) Application of EPA-promulgated effluent limitations to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been withdrawn by EPA or remanded. In the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variance from these effluent limitations under R317-8-2.3(1) and R317-8-7.3;

(b) On a case-by-case basis to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors and shall consider:

1. The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information.

2. Any unique factors relating to the applicant.

(c) Through a combination of the methods in paragraphs (a) and (b) of this section. Where EPA promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutant, other aspects or activities are subject to regulation on case-by-case basis in order to carry out the provisions of the CWA;

(d) Limitations developed under paragraph (c)2 of this section may be expressed, where appropriate, in terms of toxicity provided it is shown that the limits reflect the appropriate requirements of the act;

(e) In setting case-by-case limitations pursuant to R317-8-7.1(3), the permit writer must consider the following factors:

1. For BPT requirements:

a. The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

b. The age of equipment and facilities involved;

c. The process employed;

d. The engineering aspects of the application of various types of control techniques;

e. Process changes; and

f. Non-water quality environmental impact (including energy requirements).

2. For BCT requirements:

a. The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

b. The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

c. The age of equipment and facilities involved;

d. The process employed;

e. The engineering aspects of the application of various types of control techniques;

f. Process changes; and

g. Non-water quality environmental impact (including energy requirements).

3. For BAT requirement:

a. The age of equipment and facilities involved;

b. The process employed;

c. The engineering aspects of the application of various types of control techniques;

d. The cost of achieving such effluent reduction; and

e. Non-water quality environmental impact (including energy requirements).

(f) Technology-based treatment requirements are applied prior to or at the point of discharge.

(4) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(a) The technology based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(b) The discharger agrees to waive any opportunity to request a variance under R317-8-2.3;

(c) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(5) Technology-based effluent limitations will be established for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(6)(a) The Executive Secretary may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or limit for a nonconventional pollutant which shall not be subject to modification where:

1. Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

2.a. The limitation reflects BAT-level control of discharges of one or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

b. The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level control of the toxic pollutant discharges identified in (6)(l)(b)(ii) of this section, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

(b) The Executive Secretary may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

1. Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substances; or

2.a. The limitation reflects BAT-level, co-control of discharges, or an appropriate level of one or more hazardous substance(s) which are present in the waste stream, and a specific BAT or other appropriate limitation upon the hazardous substance which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substance is not feasible for economic or technical reasons;

b. The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level, or other appropriate level, control of the hazardous substances discharges identified in (6)(l)(b)(ii) of this section, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

d. Hazardous substances which are also toxic pollutants are subject to R317-8-7.1(6).

(3) The Executive Secretary may not set more stringent limits under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substances) controlled by the limit were limited directly.

(d) Toxic pollutants identified under R317-8-7.1(6) remain subject to R317-8-4.1(15) which requires notification of increased discharges of toxic pollutants above levels reported in the application form.

7.2 CRITERIA FOR ISSUANCE OF PERMITS TO AQUACULTURE PROJECTS

(1) Purpose and scope.

(a) This section establishes guidelines for approval of any discharge of pollutants associated with an aquaculture project.

(b) This section authorizes, on a selective basis, controlled discharges which would otherwise be unlawful under the Utah Water Quality Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially.

(c) Permits issued for discharges into aquaculture projects under this section are UPDES permits and are subject to all applicable requirements. Any permit will include such conditions, including monitoring and reporting requirements, as are necessary to comply with the UPDES regulations. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

(2) Criteria.

(a) No UPDES permit will be issued to an aquaculture project unless:

1. The Executive Secretary determines that the aquaculture project:

a. Is intended by the project operator to produce a crop which has significant direct or indirect commercial value, or is intended to be operated for research into possible production of such a crop; and

b. Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

2. The applicant has demonstrated, to the satisfaction of the Executive Secretary, that the use of the pollutant to be discharged to the aquaculture project shall result in an increased harvest of organisms under culture over what would naturally occur in the area;

3. The applicant has demonstrated, to the satisfaction of the Executive Secretary, that if the species to be cultivated in the aquacultural project is not indigenous to the immediate geographical area, there shall be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

4. The Executive Secretary determines that the crop will not have significant potential for human health hazards resulting from its consumption;

5. The Executive Secretary determines that migration of pollutants from the designated project area to waters of the State outside of the aquaculture project will not cause or contribute to a violation of the water quality or applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit will be issued for any aquaculture project in conflict with a water quality management plan or an amendment to a 208 plan approved by EPA.

(c) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.

(d) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

7.3 CRITERIA AND STANDARDS FOR DETERMINING FUNDAMENTALLY DIFFERENT FACTORS

(1) Purpose and scope.

(a) This section establishes the criteria and standards to be used in determining whether effluent limitations required by effluent limitations guidelines hereinafter referred to as "national limits", should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This section applies to all national limits promulgated except for best practicable treatment (BPT) standards for stream electric plants.

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(g) of the Clean Water Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under R317-8-2.3(1). In addition, such a variance may be proposed by the Executive Secretary in the draft permit.

(2) Criteria.

(a) A request for the establishment of effluent limitations under this section shall be approved only if:

1. There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

2. Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limit; and

3. The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of R317-8-6.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines will be approved only if:

1. The alternative effluent limitation requested is not less stringent than justified by the fundamental difference; and

2. The alternative effluent limitation or standard will ensure compliance with the UPDES regulations and the Utah Water Quality Act.

3. Compliance with the national limits, either by using the technologies upon which the national limits are based or by other control alternative, would result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

1. The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative effluent limitation or standard would not result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

1. The nature or quality of pollutants contained in the raw wasteload of the applicant's process wastewater;

2. The volume of the discharger's process wastewater and effluent discharged;

3. Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

4. Energy requirements of the application of control and treatment technology;

5. Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

6. Cost of compliance with required control technology.

(c) A variance request or portion of such a request under this section will not be granted on any of the following grounds:

1. The infeasibility of installing the required waste treatment equipment within the time allowed in R317-8-7.1.

2. The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

3. The discharger's ability to pay for the required waste-treatment; or

4. The impact of a discharge on local receiving water quality.

(3) Method of application.

(a) A written request for a variance under this regulation shall be submitted in duplicate to the Executive Secretary in accordance with R317-8-6.

(b) The burden is on the person requesting the variance to explain that:

1. Factor(s) listed in subsection (2) of this section regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The person making the request shall refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication relevant to the regulations.

2. The alternative limitations requested are justified by the fundamental difference alleged in subparagraph l of this subsection; and

3. The appropriate requirements of subsection 2 of this section have been met.

7.4 CRITERIA FOR DETERMINING ALTERNATIVE EFFLUENT LIMITATIONS

(1) Purpose and scope. The factors, criteria and standards for the establishment of alternative thermal effluent limitations will be used in UPDES permits and will be referred to as R317-8-2.3(4) variances.

(2) Definitions. For the purpose of this section:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under R317-8-2.3(4).

(b) "Representative important species" means species which are representative of a balanced, indigenous community of shellfish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of

domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with R317-8-4.1(l)(6) and may not include species whose presence of abundance is attributable to alternative effluent limitations imposed pursuant to R317-8-2.3(4).

(3) Early screening of applications for R317-8-2.3(4) variance.

(a) Any initial application for the variance shall include the following early screening information:

1. A description of the alternative effluent limitation requested;

2. A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

3. A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

4. Such data and information as may be available to assist the Executive Secretary in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a) of this subsection, the discharger shall consult with the Executive Secretary at the earliest practicable time, but not later than thirty (30) days after the application is filed, to discuss the discharger's early screening information. Within sixty (60) days after the application is filed, the discharger shall submit for the Executive Secretary's approval a detailed plan of study which the discharger will undertake to support its R317-8-2.3(4) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies: representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Executive Secretary will either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Executive Secretary subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the administration.

(c) Any application for the renewal of R317-8-2.3(4) variance shall include only such information described in R317-8-7.4(3)(a) and (b) and R317-8-6 as the Executive Secretary requests within sixty (60) days after receipt of the permit application.

(d) The Executive Secretary shall promptly notify the Secretaries of the U.S. Departments of Commerce and Interior and any affected state of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a R317-8-2.7 (4) application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under paragraph (a) of this subsection. This request will be granted or denied at the discretion of the Executive Secretary.

(4) Criteria and standards for the determination of alternative effluent limitations.

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the Executive Secretary that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration shall show that the alternative effluent desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Executive Secretary may consider any information contained or referenced in any applicable thermal water quality criteria and information published by the Administrator under CWA section 304(a) (33 U.S.C. Section 1314(a)) or any other information which may be relevant.

(c) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

1. That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

2. That despite the occurrence of such previous harm, the desired alternative effluent limitations, or appropriate modifications thereof, shall nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(5) In determining whether or not appreciable harm has occurred, the Executive Secretary will consider the length of time in which the applicant has been discharging and the nature of the discharge.

7.5 CRITERIA AND STANDARDS FOR BEST MANAGEMENT PRACTICES

(1) Purpose and Scope.

Best management practices (BMPs) for ancillary industrial activities shall be reflected in permits, including best management practices promulgated in effluent limitations and established on a case-by-case basis in permits.

(2) Definition.

"Manufacture" means to produce as an intermediate or final product, or by-product.

(3) Applicability of best management practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic or any pollutant listed as hazardous are subject to the requirements of R317-8-7.5 for all activities which may result in significant amounts of those pollutants reaching waters of the State. These activities are ancillary manufacturing operations including: Materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

(4) Permit terms and conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable promulgated effluent limitations guideline;

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary. In issuing a permit containing BMP requirements, the Executive Secretary shall consider the following factors:

1. Toxicity of the pollutant(s);

2. Quantity of the pollutants(s) used, produced, or discharged;

3. History of UPDES permit violations;

4. History of significant leaks or spills of toxic or hazardous pollutants;

5. Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commercial fishery); and

6. Any other factors determined to be relevant to the control of toxic or hazardous pollutants.

(c) Best management practices may be established in permits under R317-8-7.5(4)(b) alone or in combination with those required under R317-8-7.5(4)(a).

(d) In addition to the requirements of R317-8-7.5(4)(a) and (b), dischargers covered under R317-8-7.5(4) shall develop and implement a best management practices program in accordance with R317-8-7.5(5) which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the State.

(5) Best management practices programs.

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this subpart.

(b) The BMP program shall:

1. Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

2. Establish specific objectives for the control of toxic and hazardous pollutants.

a. Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the State due to equipment failure, improper operation, natural phenomena such as rain or snowfall.

b. Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

3. Establish specific best management practices to meet the objectives identified under R317-8-7.5(5)(b)2, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the State;

4. The BMP program: a. May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA and 40 CFR Part 151, and Storm Water Pollution Prevention Plans (SWPP),and may incorporate any part of such plans into the BMP program by reference;

b. Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA). Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

c. Shall address the following points for the ancillary activities in R317-8-7.4A(3):

i. Statement of policy;

ii. Spill Control Committee;

iii. Material inventory;

iv. Material compatibility;

v. Employee training;

vi. Reporting and notification procedures;

vii. Visual inspections;

viii. Preventative maintenance;

ix. Housekeeping; and

x. Security.

5. The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Executive Secretary shall approve or modify the program in accordance with the requirements of this subpart. The BMP program as approved or modified shall be included in the draft permit. The BMP program shall be subject to the applicable permit issuance requirements of R317-8, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

6. Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Executive Secretary for approval. If the Executive Secretary approves the proposed BMP program modification, the permit shall be modified in accordance with R317-8-5.6, provided that the Executive Secretary may waive the requirements for public notice and opportunity for public hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Executive Secretary specifies a later date in the permit.

(c) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Executive Secretary upon request.

(d) The owner or operator of a facility subject to this subpart shall amend the BMP program in accordance with the provisions of this subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the State.

(e) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under R317-8-7.5(5)(b), the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

7.6 TOXIC POLLUTANTS. References throughout the UPDES regulations establish specific requirements for discharges of toxic pollutants. Toxic pollutants are listed below:

(1) Acenaphthene
(2) Acrolein
(3) Acrylonitrile
(4) Aldrin/Dieldrin
(5) Antimony and compounds
(6) Arsenic and compounds
(7) Asbestos
(8) Benzene
(9) Benzidine
(10) Beryllium and compounds
(11) Cadmium and compounds
(12) Carbon tetrachloride
(13) Chlordane (technical mixture and metabolites)
(14) Chlorinated benzenes (other than dichlorobenzenes)
(15) Chlorinated ethanes (including 1,2-dichloroethan, 1,1,1-trichloroethane, and hexachloroethane)
(16) Chloroalkyl ethers (chloromethyl, chloroethyl, and moxed ethers)
(17) Chlorinated naphthalene

(18) Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
(19) Chloroform
(20) 2-chlorophenol
(21) Chromium and compounds
(22) Copper and compounds
(23) Cyanides
(24) DDT and metabolites
(25) Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
(26) Dichlorobenzidine
(27) Dichloroethylenes (1,1- and 1,2-dichloroethylene)
(28) 2,4-dimethylphenol
(29) Dichloropropane and dichloropropene
(30) 2,4-dimethylphenol
(31) Dinitrotoluene
(32) Diphenylhydrazine
(33) Endosulfan and metabolities
(34) Ethylbenzene
(35) Enthylbenzene
(36) Fluoranthene
(37) Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
(38) Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane
(39) Heptachlor and metabolites
(40) Hexachlorobutadiene
(41) Hexachlorocyclohexane
(42) Hexachlorocyclopentadiene
(43) Isophorone
(44) Lead and compounds
(45) Mercury and compounds
(46) Naphthalene
(47) Nickel and compounds
(48) Nitrobenze
(49) Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
(50) Nitrosamines
(51) Pentachlorophenol
(52) Phenol
(53) Phthalate esters
(54) Polychlorinated biphenyls (PCBs)
(55) Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
(56) Selenium and compounds
(57) Silver and compounds
(58) 2,3,7,8-tetrachloro/dibenzo-p-dioxin (TCDD)
(59) Tetrachloroethylene
(60) Thallium and compounds
(61) Toluene
(62) Toxaphene
(63) Trichloroethylene
(64) Vinyl chloride
(65) Zinc and compounds

7.7 CRITERIA FOR EXTENDING COMPLIANCE DATES FOR FACILITIES INSTALLING INNOVATIVE TECHNOLOGY

(1) Purpose and Scope. This Section establishes the criteria and procedures to be used in determining whether an industrial discharger will be granted a compliance extension for the installation of an innovative technology.

(2) Authority. The Executive Secretary, in consultation with the Administrator, may grant a compliance extension for BAT limitations to a discharger which installs an innovative technology. The innovative technology must produce either a significantly greater effluent reduction than that achieved by the best available technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Executive Secretary is authorized to grant compliance extensions to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable.

(3) Definitions.

(a) The term "innovative technology" means a production process, a pollution control technique, or a combination of the two which satisfies one of the criteria in R317-8-7.8(4) and which has not been commercially demonstrated in the industry of which the requesting discharger is a part.

(b) The term "potential for industry-wide application" means that an innovative technology can be applied in two or more facilities which are in one or more industrial categories.

(c) The term "significantly greater effluent reduction than BAT" means that the effluent reduction over BAT produced by an innovative technology is significant when compared to the effluent reduction over best practicable control technology currently available (BPT) produced by BAT.

(d) The term "significantly lower cost" means that an innovative technology must produce a significant cost advantage when compared to the technology used to achieve BAT limitations in terms of annual capital costs and annual operation and maintenance expenses over the useful life of the technology.

(4) Request for Compliance Extension. The Executive Secretary shall grant a compliance extension to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable to a discharger that demonstrates:

(a) That the installation and operation of its proposed innovative technology at its facility will result in a significantly greater effluent reduction than BAT and has the potential for industry-wide application; or

(b) That the installation and operation of its proposed innovative technology at its facility will result in the same effluent reduction as BAT at a significantly lower cost and has the potential for industry-wide application.

(5) Permit conditions. The Executive Secretary may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable date is granted:

(a) A requirement that the discharger report annually on the installation, operation and maintenance costs of the innovative technology;

(b) Alternative BAT limitations that the discharger must meet as soon as possible and not later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.

(6) Signatories to Request for Compliance Extension.

(a) All requests must be signed in accordance with the provisions of R317-8-3.4.

(b) Any person signing a request under paragraph (a) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(c) A professional engineer shall certify that the estimates by the applicant of the costs for the BAT control equipment and for the innovative technology are made in accordance with good engineering practice and represent, in his judgement, the best information available. The Executive Secretary may waive the

requirements for certification under this subsection if, in his opinion, the cost of such certification is unreasonable when compared to the annual sales of the applicant.

(7) Supplementary Information and Record keeping.

(a) In addition to the information submitted in support of the request, the applicant shall provide the Executive Director, at his or her request, such other information as the Executive Director may reasonably require to assess the performance and cost of the innovative technology.

(b) Applicants shall keep records of all data used to complete the request for a compliance extension for the life of the permit containing the compliance extension.

(8) Procedures.

(a) The procedure for requesting a section 301(k) compliance extension is contained in R317-8-2.8. In addition, notwithstanding R317-8-2.3(3), the Executive Secretary may accept applications for such extensions after the close of the public comment period on the permit if the applicant can show that information necessary to the development of the innovation was not available at the time the permit was written and that the innovative technology can be installed and operated in time to comply no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable.

R317-8-8. Pretreatment.

8.1 APPLICABILITY

(1) This section applies to the following:

(a) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;

(b) POTWs which receive wastewater from sources subject to national pretreatment standards; and

(c) Any new or existing source subject to national pretreatment standards.

(2) National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW.

8.2 DEFINITIONS. The following definitions pertain to indirect dischargers and POTWs subject to pretreatment standards and the UPDES program.

(1) "Approved POTW pretreatment program" means a program administered by a POTW that meets the criteria established in R317-8-8.8 and 8.9 and which has been approved by the Executive Secretary in accordance with R317-8-8.10.

(2) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated by the UPDES program.

(3) "Industrial user" or "user" means a source of indirect discharge.

(4) "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources both:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(b) Therefore is a cause of a violation of any requirement of the POTW's UPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder.

(5) "National pretreatment standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with section 307 (b) and (c) of the CWA, which applies to industrial users. This includes prohibitive discharge limits established pursuant to R317-8-8.5.

(6) "New Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after publication of proposed Pretreatment Standards under section 307(c) of the Federal Clean Water Act which will be applicable to such source, if such standards are thereafter promulgated in accordance with that section. See R317-8-8.3 for provisions applicable to this definition.

(7) "Pass through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the POTW's UPDES permit (including an increase in the magnitude or duration of violation).

(8) "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation of municipal sewage and industrial waste.

(9) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).

(10) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than a National Pretreatment Standard, imposed on an industrial user.

(11) The term "Publicly Owned Treatment Works" or "POTW" means a treatment works which is owned by State or municipality within the State. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(12) The term "POTW Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

(13) "Significant Industrial User"

(a) Except as provided in R317-8-8.2(11)(a)2, the term Significant Industrial User means:

1. All industrial users subject to Categorical Pretreatment standards under 40 CFR 403.6 and 40 CFR Parts 405 through 471; and

2. Any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or designated as such by the Control Authority as defined in R317-8-8.11(1) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(b) Upon a finding that an industrial user meeting the criteria in R317-8-8.1(10)(a)2 has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in R317-8-8.11(1)) may at any time, on its own

initiative or in response to a petition received from an industrial user or POTW, determine that such industrial user is not a significant industrial user.

(14) "Submission" means (a) a request by a POTW for approval of a pretreatment program to the Executive Secretary or (b) a request by a POTW for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.

8.3 PROVISIONS APPLICABLE TO DEFINITIONS. The following provisions are applicable to the definition of "New Source" provided that:

(1) The building, structure, facility or installation is constructed at a site at which no other source is located, or

(2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source, or

(3) The production or wastewater generating process of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(4) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of R317-8-8.3(2) or (3) but otherwise alters, replaces, or adds to existing process or production equipment.

(5) construction of a new source as defined has commenced if the owner or operator has:

(a) Begun, or caused to begin as part of a continuous on-site construction program:

1. Any placement, assembly, or installation of facilities or equipment: or

2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment: or

3. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.

8.4 LOCAL LAW. Nothing in this rule is intended to affect any pretreatment requirements, including any standards or prohibitions established by local law as long as the local requirements are not less stringent than any set forth in national pretreatment standards, or any other requirements or prohibitions established by the Executive Secretary.

8.5 NATIONAL PRETREATMENT STANDARDS: Prohibited Discharges

(1) General Prohibitions. Pollutants introduced into POTWs by a non-domestic source shall not pass through the POTW or interfere with the operation or performance of the works. These general prohibitions and the specific prohibitions in R317-8-8.5(3) apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other National Pretreatment Standards or any national, State or local pretreatment requirements.

(2) Affirmative Defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in R317-8-8.5(1) and the specific prohibitions in R317-8-8.5(3)(c),(d),(e), and (g) where the user can demonstrate that:

(a) It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

(b)i. A local limit designed to prevent pass through and/or interference, as the case may be, was developed in accordance with R317-8-8.5(4) for each pollutant in the user's discharge that caused pass through or interference, and the user was in compliance with each such local limit directly prior to and during the pass through or interference; or

ii. If a local limit designed to prevent pass through and/or interference, as the case may be, has not been developed in accordance with R317-8-8.5(4) for the pollutant(s) that caused the pass through or interference, the user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's UPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(3) Specific Prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

(a) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in R315-2-1.

(b) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;

(c) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;

(d) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW:

(e) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40 degrees C (104 degrees F) unless the Executive Secretary, upon request of the POTW, approves alternate temperature limits.

(f) Petroleum oil, nonbiodegrable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; and

(h) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(4) When specific limits must be developed by POTW.

(a) POTWs developing POTW pretreatment programs shall develop and enforce specific limits to implement the prohibitions listed in R317-8-8.5(1) and R317-8-8.5(3). Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits;

(b) All other POTWs shall, in cases where pollutants contributed by user(s) result in interference or pass-through, and such violation is likely to recur, develop and enforce specific effluent limits for industrial user(s), and all other users, as appropriate, which, together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's UPDES permit or sludge use or disposal practices;

(c) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(5) Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with R317-8-8.5(4), such limits shall be deemed pretreatment standards for purposes of 19-5-108 of the Utah Water Quality Act.

(6) State enforcement actions. If, within 30 days after notice of an interference or pass through violation has been sent by the Executive Secretary to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the Executive Secretary may take appropriate enforcement action.

8.6 NATIONAL PRETREATMENT STANDARDS: Categorical Standards

(1) In addition to the general prohibitions in R317-8-8.4(1), all indirect dischargers shall comply with national pretreatment standards in 40 CFR Chapter I, Subchapter N. Compliance shall be required within the time specified in the appropriate subpart of Subchapter N.

(2) Industrial users may request the Executive Secretary to provide written certification on whether an industrial user falls within a particular subcategory. The Executive Secretary will act upon that request in accordance with the procedures in 40 CFR 403.6.

(3) Limitations for industrial users will be imposed in accordance with 40 CFR 403.6 (c) - (e).

8.7 REMOVAL CREDITS. POTWs may revise pollutant discharge limits specified in categorical pretreatment standards to reflect removal of pollutants by the POTW. Revisions must be made in accordance with the provisions of 40 CFR 403.7.

8.8 POTW PRETREATMENT PROGRAMS: Development by POTW

(1) POTW required to develop a pretreatment program. Any POTW, or combination of POTWs operated by the same authority, with a total design flow greater than 5 million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall be required to establish a POTW pretreatment program unless the Executive Secretary exercises the option to assume local responsibility as provided for in R317-8-8.8(6)(b)(12). The Executive Secretary may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if it is found that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances so warrant in order to prevent interference or pass through.

(2) Deadline for Program Approval. POTWs identified as being required to develop a POTW pretreatment program under R317-8-8.8(1) shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Executive Secretary of such identification. The POTW pretreatment program shall meet the criteria set forth in R317-8-8.8(6) and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

(3) Incorporation of Approved Programs in Permits. A POTW may develop an approvable POTW pretreatment program any time before the time limit set forth in R317-8-8.8(2). The POTW's UPDES permit will be modified under R317-8-5.6(3)(g) to incorporate the approved program conditions as enforceable conditions of the permit.

(4) Incorporation of Compliance Schedules in Permits. If the POTW does not have an approved pretreatment program at the time the POTWs existing permit is reissued or modified, the reissued or modified permit will contain the shortest reasonable compliance schedule, not to exceed three years, for the approval of the legal authority, procedures and funding required by paragraph (6) of this subsection.

(5) Cause for Reissuance or Modification of Permits. The Executive Secretary may modify or revoke and reissue a POTW's permit in order to:

(a) Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(b) Coordinate the issuance of a CWA Section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

(c) Incorporate an approved POTW pretreatment program in the POTW permit;

(d) Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(e) Incorporate a modification of the permit approved under R317-8-5.6; or

(f) Incorporate the removal credits established under R317-8-8.7.

(6) Pretreatment Program Requirements: Development and Implementation by POTW. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(a) Legal authority. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts which authorizes or enables the POTW to apply and to enforce the requirements of this section. The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its UPDES permit;

2. Require compliance with applicable pretreatment standards and requirements by industrial users;

3. Control, through permit, order or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under R317-8-8.2(10), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

a. Statement of duration (in no case more than five years);

b. Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

c. Effluent limits based on applicable general pretreatment standards, categorical pretreatment standards, local limits and State and local law;

d. Self-monitoring, sampling, reporting, notification and record keeping requirements, including identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards, categorical pretreatment standards, local limits, and State and local law;

e. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

4. Require the development of a compliance schedule by

each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; including but not limited to the reports required in R317-8-8.11 of this section;

5. Require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements;

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under R317-8-8.11 of this section to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under Section 19-5-106(4) of the Utah Water Quality Act.

7. Obtain remedies for noncompliance by industrial users with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance and shall have authority to seek or assess civil or criminal penalties in at least the amount of $1,000 a day for each violation of pretreatment standards and requirements by industrial users. POTWs whose approved pretreatment programs require modification to conform to the requirements of this paragraph shall submit a request for approval of a program modification in accordance with Section R317-8-8.15 by November 16, 1989.

8. Pretreatment requirements enforced through the remedies set forth in R317-8-8.8(6)(a)(7) shall include, but not be limited to, the duty to allow or carry out inspection entry or monitoring activities; any rules, regulations or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or R317-8-8. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial user and opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present a danger to the environment or which threatens to interfere with the operation of the POTW. The Executive Secretary shall have authority to seek judicial relief for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a penalty which the Executive Secretary finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable State or Federal law and not by this provision, and will comply with the confidentiality requirements set forth in R317-8-3.3.

(b) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

1. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users made under this paragraph shall be made available to the Executive Secretary upon request;

2. Identify the character and volume of pollutants contributed to the POTW by the industrial user identified under subparagraph (1) above. This information shall be made available to the Executive Secretary upon request;

3. Notify industrial users identified under R317-8-8.8(6)(b) of applicable pretreatment standards and any other applicable requirements. Within 30 days of approval of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

4. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the requirements of R317-8-8.11.

5. Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two years, whether each such significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. The results of such activities shall be available to the Executive Secretary upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

a. Description of discharge practices, including non-routine batch discharges;

b. Description of stored chemicals;

c. Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under R317-8-8.5 with procedures for follow-up written notification within five days;

d. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response. The results of these activities shall be made available to the Executive Secretary upon request;

6. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by R317-8-8.11, or indicated by analysis, inspection, and surveillance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions;

7. Comply with all applicable public participation requirements of State law and rules. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at anytime during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC. TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH.

c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control

Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under R317-8-8.8(6)(a)8 to halt or prevent such a discharge:

e. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance:

f. Failure to provide within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance; and

h. Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

8. Funding. The POTW shall have sufficient resources and qualified personnel to carry out all required authorities and procedures. In some limited circumstances, funding and personnel may be delayed by the Executive Secretary when the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements and a limited aspect of the program does not need to be implemented immediately.

9. Local Limits. The POTW shall develop local limits as required in section R317-8-8.5(4) or demonstrate that they are not necessary.

10. Enforcement Response Plan. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how the POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum;

a. Describe how the POTW will investigate instances of noncompliance;

b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

c. Identify (by title) the official(s) responsible for each type of response;

d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in R317-8-8.7(6)(a) and (b).

11. List of Industrial Users. The POTW shall prepare a list of its industrial users meeting the criteria of R317-8-8.2(10)(a). The list shall identify the criteria in R317-8-8.2(10)(a)(1) applicable to each industrial user and, for industrial users meeting the criteria in R317-8-8.2(10)(a)(2), shall also indicate whether the POTW has made a determination pursuant to R317-8-8.2(10)(b) that such industrial user should not be considered a significant industrial user. This list and any subsequent modifications thereto, shall be submitted to the Executive Secretary as a nonsubstantial program modification. Discretionary designations or de-designations by the Control Authority shall be deemed to be approved by the Executive Secretary 90 days after submission of the list or modifications thereto, unless the Executive Secretary determines that a modification is in fact a substantial modification.

12. State Program in Lieu of POTW Program. Notwithstanding the provision of R317-8-8.8(1), the State may assume responsibility for implementing the POTW pretreatment program requirements set forth in R317-8-8.8(6) in lieu of requiring the POTW to develop a pretreatment program. However, this does not preclude POTW's from independently developing pretreatment programs.

8.9 POTW PRETREATMENT PROGRAMS AND/OR AUTHORIZATION TO REVISE PRETREATMENT STANDARDS: SUBMISSION FOR APPROVAL

(1) Who Approves the Program. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in R317-8-8.9(2)(a),(b),(c) and (d). This description shall be submitted to the Executive Secretary, who will make a determination on the request for program approval in accordance with the procedure described in R317-8-8.10.

(2) Contents of POTW Program Submission.

(a) The program submission shall contain a statement from the city attorney or a city official acting in comparable capacity or the attorney for those POTWs which have independent legal counsel, that the POTW has authority adequate to carry out the programs described in R317-8-8.8. This statement shall:

1. Identify the provision of the legal authority under R317-8-8.8(6)(a) which provides the basis for each procedure under R317-8-8.8(6)(b);

2. Identify the manner in which the POTW will implement the program requirements set forth in R317-8-8.8 including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and

3. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

(b) The program submission shall contain a copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved.

(c) The program submission shall contain a brief description, including organization charts, of the POTW organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program the responsible agencies should be identified, their respective responsibilities delineated and their procedures for coordination set forth.

(d) The program submission shall contain a description of the funding levels and full and part time manpower available to implement the program.

(3) Conditional POTW Program Approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements of R317-8-8.9(2) of this subsection except that the requirements of this section may be relaxed if the submission demonstrates that:

(a) A limited aspect of the program does not need to be implemented immediately;

(b) The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

(c) Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Executive Secretary will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

(4) Content of Removal Credit Submission. The request for authority to revise categorical pretreatment standards shall contain the information required in 40 CFR 403.7.

(5) Approval Authority Action. A POTW requesting

POTW pretreatment program approval shall submit to the Executive Secretary three copies of the submission described in R317-8-8.9(2). Within 60 days after receiving a submission, the Executive Secretary shall make a preliminary determination of whether the submission meets the requirements of this section. Upon a preliminary determination that the submission meets the requirements of this section, the Executive Secretary will:

(a) Notify the POTW that the submission has been received and is under review; and

(b) Commence the public notice and evaluation activities set forth in R317-8-8.10.

(6) Notification Where Submission is Defective. If, after review of the submission as provided for in paragraph (5) above, the Executive Secretary determines that the submission does not comply with the requirements of R317-8-8.9(2), (3) and, if appropriate, (4), the Executive Secretary will provide notice in writing to the applying POTW and each person who has requested individual notice. This notification will identify any defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of R317-8-8.9(2), (3) and, if appropriate, (4).

(7) Consistency With Water Quality Management Plans.

(a) In order to be approved, the POTW pretreatment program shall be consistent with any approved water quality management plan, when the plan includes management agency designations and addresses pretreatment in a manner consistent with R317-8-8. In order to assure such consistency, the Executive Secretary will solicit the review and comment of the appropriate water quality planning agency during the public comment period provided for in R317-8-8.10(2)(a)(2) prior to approval or disapproval of the program.

(b) Where no plan has been approved or when a plan has been approved but lacks management agency designations and/or does not address pretreatment in a manner consistent with this section, the Executive Secretary will solicit the review and comment of the appropriate 208 planning agency.

8.10 APPROVAL PROCEDURES FOR POTW PRETREATMENT PROGRAMS AND POTW GRANTING OF REMOVAL CREDITS. The following procedure will be adopted in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization.

(1) Deadline for Review of Submission. The Executive Secretary will have 90 days from the date of public notice of a submission complying with the requirements of R317-8-8.9(2), and where removal credit authorization is sought with the requirements of R317-8-8.7 and 8.8.9(4) to review the submission. The Executive Secretary shall review the submission to determine compliance with the requirements of R317-8-8.8(2) and (6), and where removal credit is sought, with R317-8-8.6. The Executive Secretary may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in R317-8-8.10(2) is extended beyond thirty (30) days or if a public hearing is held as provided for in R317-8-8.10(2)(a). In no event, however, will the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission.

(2) Public Notice and Opportunity for Public Hearing. Upon receipt of a submission the Executive Secretary will commence his review. Within 20 days after making a determination that a submission meets the requirements of R317-8-8.9(2), and when a removal credit authorization is sought under R317-8-8.7 the Executive Secretary will:

(a) Issue a public notice of request for approval of the submission:

1. This public notice will be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice will include: mailing notices of the request for approval of the submission to designated CWA section 208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.

2. The public notice will provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the submission;

3. All written comments submitted during the 30-day comment period will be retained by the Executive Secretary and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the Executive Secretary.

(b) The Executive Secretary will also provide an opportunity for the applicant, any affected State, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

1. This request for public hearing shall be filed within the thirty (30) day or extended comment period described in R317-8-8.10(2)(a)2. of this subsection and will indicate the interest of the person filing such a request and the reasons why a hearing is warranted.

2. The Executive Secretary will hold a public hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt will be resolved in favor of holding the hearing.

3. Public notice of a public hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and right to participate will be published in the same newspaper as the notice of the original request. In addition, notice of the hearing will be sent to those persons requesting individual notice.

(3) Executive Secretary Decision. At the end of the thirty (30) day or extended comment period and within the ninety (90) day or extended period provided for in R317-8-8.10(1) of this section, the Executive Secretary will approve or deny the submission based upon the evaluation in R317-8-8.10(1) and taking into consideration comments submitted during the comment period and the record of the public hearing, the Executive Secretary will so notify the POTW and each person who has requested individual notice. This notification will include suggested modification and the Executive Secretary may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(4) EPA Objection to Executive Secretary's Decision. No POTW pretreatment program or authorization to grant removal allowances will be approved by the Executive Secretary if following the thirty (30)-day or extended evaluation period provided for in R317-8-8.10(2)(a)(2) and any public hearing held pursuant to this section, the Regional Administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the Regional Administrator's objections will be provided to the applicant and to each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and many convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(5) Notice of Decision. The Executive Secretary will notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the Executive Secretary will cause

to be published a notice of approval or disapproval in the same newspapers as the original notice of request was published. The Executive Secretary will identify any authorization to modify categorical pretreatment standards which the POTW may make for removal of pollutants subject to the pretreatment standards.

(6) Public Access to Submission. The Executive Secretary will ensure that the submission and any comments on the submission are available to the public for inspection and copying.

8.11 REPORTING REQUIREMENTS FOR POTWS AND INDUSTRIAL USERS

(1) Definition. "Control Authority" means the POTW if the POTW's submission for its pretreatment program has been approved or the Executive Secretary if the submission has not been approved.

(2) Reporting Requirement for Industrial Users Upon Effective Date of Categorical Pretreatment Standards Baseline Report. Within 180 days after the effective date of a categorical pretreatment standard or 180 days after the final administrative decision made upon a category determination submission under R317-8-8.6, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (a) through (g) of this Section. Where reports containing this information have already been submitted to the Executive Secretary, the industrial user will not be required to submit this information again. At least 90 days prior to commencement of discharge, new sources and sources that become Industrial Users subsequent to promulgation of an applicable categorical standard, shall be required to submit to the Control Authority a report which contains the information listed in R317-8-8.11(2)(a), (b), (c), (d) and R317-8-8.11(3). New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in R317-8-8.11(2)(d) and (e).

(a) Identifying Information. The user shall submit the name and address of the facility, including the name of the operator and owners.

(b) Permits. The user shall submit a list of any environmental control permits held by or for the facility.

(c) Description of Operations. The user shall submit a brief description of the nature, average rate of production and Standard Industrial Classification of the operation carried out by the industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated process.

(d) Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following: regulated process streams and other streams as necessary to allow use of the combined wastestream formula (see Section 40 CFR 403.6(e)). The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(e) Measurement of pollutants.

1. The user shall identify the pretreatment standards applicable to each regulated process.

2. The user shall submit the results of sampling and analysis identifying the nature and concentration, or mass, of regulated pollutants in the discharge from each regulated process when required by the Control Authority. Both daily maximum and average concentration or mass, where required shall be reported. The sample shall be representative of daily operations.

3. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control authority may waive flow-proportional composite sampling for any Industrial Users that demonstrate that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged.

4. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of R317-8-8.11.

5. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in order to evaluate compliance with the pretreatment standards. When an alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula this adjusted limit along with supporting data shall be submitted to the Control Authority.

6. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136. When 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or when the Administrator determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

7. The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

8. The baseline report shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(f) Certification. The user shall submit a statement, reviewed by an authorized representative of the industrial user and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

(g) Compliance Schedule. If additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, the user shall submit the shortest schedule by which the industrial user will provide such additional pretreatment and/or operation and maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

1. When the industrial user's categorical pretreatment standard has been modified by a removal allowance under R317-8-8.7, the combined wastestream formula under R317-8-8.6,or by a fundamentally different factors variance under R317-8-8.15 at the time the user submits the report required by R317-8-8.11(2), the information required by R317-8-8.11(2)(f) and (g) shall pertain to the modified limits.

2. If the categorical pretreatment standard is modified by a removal allowance under R317-8-8.7, the combined wastestream formula under R317-8-8.6, or by a fundamentally different factors variance under R317-8-8.15 after the user submits the report required by R317-8-8.11(2) of this

subsection, any necessary amendments to the information requested by R317-8-8.11(2)(f) and (g) shall be submitted by the user to the Control Authority within 60 days after the modified limit is approved.

(3) Compliance Schedule for Meeting Categorical Pretreatment Standards. The following conditions shall apply to the schedule required by R317-8-8.11(2)(g):

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards;

(b) No increment referred to in paragraph (a) of above shall exceed 9 months;

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority;

(4) Report on Compliance with Categorical Pretreatment Standard Deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the Control Authority a report containing the information described in R317-8-8.11(2)(d. e. and f). For industrial users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in R317-8-8.6 this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

(5) Periodic Reports on Continued Compliance.

(a) Any industrial user subject to a categorical pretreatment standard after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the pretreatment standard or by the Executive Secretary, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in R317-8-8.11(2)(d) of this section except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays and budget cycles, the Control Authority may agree to alter the months during which the above reports are to be submitted.

(b) When the Control Authority has imposed mass limitations on industrial users as provided by R317-8-8.6, the report required by paragraph (a) of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(c) For industrial users subject to equivalent mass or concentration limits established by the Control authority in accordance with the procedures in R317-8-8.6 the report required by R317-8-8.11(5)(a) shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by R317-8-11(5)(a) shall include the user's actual average production rate for the reporting period.

(6) Notice of Potential Problems Including Slug Loading. All categorical and non-categorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined in R317-8-8.5.

(7) Monitoring and Analysis to Demonstrate Continued Compliance.

(a) The reports required in R317-8-8.11(2), 8.10(4) and (5) shall contain the results of sampling and analysis of the discharge, including the flow, the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the Control Authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(b) If sampling performed by an industrial user indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation, except the industrial user is not required to resample if;

1. The Control Authority performs sampling at the industrial user at a frequency of at least once per month, or

2. The Control Authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(c) The reports required in this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable Pretreatment Standards and Requirements.

(d) All analyses shall be performed in accordance with procedures contained in 40 CFR 136 or with any other test procedures approved by the Administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR 136 does not include sampling or analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties and approved by the Administrator.

(e) If an industrial user subject to the reporting requirement in R317-8-8.11(5) monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in, R317-8-8.11(7)(d), the results of this monitoring shall be included in the report.

(8) Compliance Schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program.

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program.

(b) No increment referred to in paragraph (a) above shall exceed nine months.

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Executive Secretary including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Executive Secretary.

(9) Reporting requirements for industrial user not subject to categorical pretreatment standards. The Control Authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant Noncategorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports shall be based on sampling and analysis performed in the period covered by the report and performed in accordance with the techniques described in 40 CFR 136. Where 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Executive Secretary determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(10) Annual POTW reports. POTWs with approved pretreatment programs shall provide the Executive Secretary with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program and at least annually thereafter, and shall include, at a minimum, the following:

(a) An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements.

(b) A summary of the status of industrial user compliance over the reporting period;

(c) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; and

(d) Any other relevant information requested by the Executive Secretary.

(11) Notification of changed discharge. All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under R317-8-8.10.

(12) Signatory Requirements for Industrial User Reports. The reports required by R317-8-8.11(2), (4) and (5) shall include the certification statement as set forth in 40 CFR and 403.6(2)(B). and shall be signed as follows;

(a) By a responsible corporate officer if the industrial user submitting the reports is a corporation. A responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user submitting the reports is a partnership or sole proprietorship respectively.

(c) By a duly authorized representative of the individual designated in paragraph (a) or (b) above, if;

1. The authorization is made in writing by the individual described in paragraph (a) or (b) above.

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

3. The written authorization is submitted to the Control Authority.

(d) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

(13) Signatory Requirements for POTW Reports. Reports submitted to the Executive Secretary by the POTW in accordance with R317-8-8.11(8), (9) and (10) shall be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(14) Provisions Governing Fraud and False Statements. The reports and other documents required to be submitted or maintained by R317-8-8.11(2), (4), (5), (8), (9), (12) and (13) shall be subject to the Utah Water Quality Act as amended and all other State and Federal laws pertaining to fraud and false statements.

(15) Record-Keeping Requirements.

(a) Any industrial user and POTW subject to the reporting requirements established in this subsection shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

2. The dates and times analyses were performed;

3. Who performed the analyses;

4. The analytical techniques or methods used; and

5. The results of the analyses.

(b) Any industrial user or POTW subject to these reporting requirements established shall be required to retain for a minimum of 3 years any records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by the Executive Secretary, and by the POTW in the case of an industrial user. This period of retention shall be extended during the course of any unresolved litigation

regarding the industrial user or POTW or when requested by the Executive Secretary.

(c) A POTW to which reports are submitted by an industrial user pursuant to R317-8-8.11(2)(4), and (5) shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Executive Secretary. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the Executive Secretary.

(d) Notification to POTW by Industrial User.

1. The industrial user shall notify the Executive Secretary, the POTW, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which if otherwise disposed of, would be a hazardous waste under R315-2-1. Such notification must include the name of the hazardous waste as set forth in R315-2-1, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under R317-8-8.11(11). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of R317-8-8.11(2), (4), and (5).

2. Dischargers are exempt from the requirements of R317-8-8.11(15)(d) during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in R315-2-1. Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 R315-2-1, requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations adopted by EPA or the Utah Solid and Hazardous Waste Board identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of notification made under R317-8-8.16(d)1, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

8.12 CONFIDENTIALITY OF INFORMATION. Any information submitted to the Executive Secretary pursuant to these regulations may be claimed as confidential by the person making the submission. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Executive Secretary may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the 40 CFR Part 2. Information and data provided to the Executive Secretary pursuant to this part which is effluent data shall be available to the public without restriction. All other information which is submitted to the State or POTW shall be available to the public at least to the standards of 40 CFR 2.302.

8.13 NET/GROSS CALCULATION. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water in accordance with this section.

(1) Application. Any industrial user wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the industrial user, the applicable standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of R317-8-8.13(2) and (3) are met.

(2) Criteria

a. The industrial user must demonstrate that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake water.

b. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS) and oil and grease should not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

c. Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standard(s) adjusted under this section.

d. Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

(3) The applicable categorical pretreatment standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis.

8.14 UPSET PROVISION

(1) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of R317-8-8.14(3) are met.

(3) Conditions Necessary for a Demonstration of Upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the industrial user can identify the cause(s) of the upset;

(b) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(c) The industrial user has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the upset or if this information is provided orally, a written submission within five days:

1. A description of the indirect discharge and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

3. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

4. Burden of Proof. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

5. Reviewability of Agency Consideration of Claims of Upset. In the usual exercise of prosecutorial discretion, State enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitutes final agency action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

6. User responsibility in case of upset. The industrial user shall control production or discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

8.15 BYPASS PROVISION

(1) Definitions.

(a) "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(b) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of R317-8-8.15(3) and (4).

(3) Notice.

(a) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.

(b) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the Control Authority within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4) Prohibition of bypass.

(a) Bypass is prohibited and the Control Authority may take enforcement action against an industrial user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waters, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

3. The industrial user submitted notices as required under R317-8-8.15(3).

(b) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in R317-8-8.15(4)(a).

8.16 MODIFICATION OF POTW PRETREATMENT PROGRAMS

(1) General. Either the Executive Secretary or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under Section R317-8-8.10.

(2) Procedures. POTW pretreatment program modifications shall be accomplished as follows:

(a) For substantial modifications, as defined in R317-8-8.16(3):

1. The POTW shall submit to the Executive Secretary a statement of the basis for the desired modification, a modified program description or such other documents the Executive Secretary determines to be necessary under the circumstances.

2. The Executive Secretary shall approve or disapprove the modification based on its regulatory requirements.

3. The modification shall be incorporated into the POTW's UPDES permit after approval. The permit will be modified to incorporate the approved modification in accordance with R317-8-5.6(3)(g).

4. The modification shall become effective upon approval by the Executive Secretary. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification.

(b) The POTW shall notify the Executive Secretary of any other (i.e. non-substantial) modifications to its pretreatment program at least 30 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in R317-8-8.16(2)(a)1. Such non-substantial program modifications shall be deemed to be approved by the Executive Secretary, unless the Executive Secretary determines that a modification submitted is in fact a substantial modification, 90 days after the submission of the POTW's statement. Following such "approval" by the Executive Secretary such modifications shall be incorporated in the POTW's permit in accordance with R317-8-5.6(2)(g). If the Executive Secretary determines that a modification reported by a POTW is in fact a substantial modification, the Executive Secretary shall notify the POTW and initiate the procedures in R317-8-8.16(2)(a).

(3) Substantial modifications.

(a) The following are substantial modifications for purposes of this section:

1. Changes to the POTW's legal authorities;

2. Changes to local limits, which result in less stringent local limits;

3. Changes to the POTW's control mechanism;

4. Changes to the POTW's method for implementing categorical Pretreatment Standards (e.g., incorporation by reference, separate promulgation, etc.):

5. A decrease in the frequency of self-monitoring or reporting required of industrial users;

6. A decrease in the frequency of industrial user inspections or sampling by the POTW;

7. Changes to the POTW's confidentiality procedures;

8. Significant reductions in the POTW's Pretreatment Program resources (including personnel commitments, equipment, and funding levels); and

9. Changes in the POTW's sludge disposal and management practices.

(b) The Executive Secretary may designate other specific modifications in addition, to those listed in R317-8-8.16(3)(a), as substantial modifications.

(c) A modification that is not included in R317-8-8.16(3)(a) is nonetheless a substantial modification for purposes of this section if the modification:

1. Would have a significant impact on the operation of the POTW's Pretreatment Program;

2. Would result in an increase in pollutant loadings at the POTW; or

3. Would result in less stringent requirements being imposed on industrial users of the POTW.

8.17 VARIANCES FROM CATEGORICAL PRETREATMENT STANDARDS FOR FUNDAMENTALLY DIFFERENT FACTORS (FDF). A variance may be granted, using the procedures of 40 CFR 403.13, to an industrial user if data specific to the user indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue.

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R317. Environmental Quality, Water Quality.
R317-10. Certification of Wastewater Works Operators.
R317-10-1. Objectives.

The certification program is established in order to assist in protecting the quality of waters in the state of Utah by helping ensure that personnel in charge of wastewater works are trained, experienced, reliable and efficient; to protect the public health and the environment and provide for the health and safety of wastewater works operators; and to establish standards and methods whereby wastewater works operating personnel can demonstrate competency.

R317-10-2. Scope.

These certification rules apply to all wastewater treatment works and sewerage systems, with the exception of Onsite Wastewater Systems and Large Underground Wastewater Disposal Systems as defined in R317-1-1. This includes both wastewater collection systems and wastewater treatment systems except underground wastewater disposal systems. Wastewater works operated by political subdivisions must employ certified operators as required in this rule. Operators of wastewater systems not requiring certified operators (such as industrial wastewater treatment systems) may be certified according to provisions of these rules for testing and certification.

R317-10-3. Authority.

The Certification Program for Wastewater Works Operators is authorized by Section 19-5-104 of the Utah Code Annotated.

R317-10-4. Definitions.

A. "Board" means the Water Quality Board.

B. "Category" means type of certification (collection or wastewater treatment).

C. "Certificate" means a certificate issued by the Council, stating that the recipient has met the minimum requirements for the specified operator grade described in this rule.

D. "Certified Operator" means a person with the appropriate education and experience, as specified in this rule, who has successfully completed the certification exam or otherwise meets the requirements of this rule.

E. "Chief Operator" means the supervisor in direct responsible charge of all shift operators for a collection or treatment system.

F. "Collection System" means the system designed to collect and transport sewage from the beginning points that the collection entity regards as their responsibility to maintain and operate, to the points where the treatment facility assumes responsibility for operation and maintenance.

G. "Council" means the Utah Wastewater Operator Certification Council.

H. "Continuing Education Unit (CEU)" means ten contact hours of participation in and successful completion of an organized and approved continuing education experience. College credit in approved courses may be substituted for CEUs on an equivalency basis as defined in this rule.

I. "Direct Responsible Charge (DRC)" means active on-site charge and performance of operation duties. The person in direct responsible charge is generally a supervisor over wastewater treatment or collection who independently makes decisions affecting all treatment or system processes during normal operation which may effect the quality, safety, and adequacy of treatment of wastewater discharged from the plant. In cases where only one operator is employed, this operator shall be considered to be in direct responsible charge.

J. "Executive Secretary" means the Executive Secretary of the Water Quality Board.

K. "Grade Level" means any one of the possible steps within a certification category of either wastewater collection or wastewater treatment. There are four levels each for collection and treatment system operators, Grade I being the lowest and Grade IV the highest level. There is one level for lagoon operators.

L. "Grandfather Certificate" means a certificate issued to an operator, without taking an examination, by virtue of the operator meeting experience and other requirements in R317-10-11.G of this rule.

M. "Operating Experience" means experience gained in operating a wastewater treatment plant or collection system which enables the operator to make correct supervisory, operational, safety, and maintenance decisions affecting personnel, water quality, public health, regulatory compliance, and wastewater works operation, efficiency, and longevity.

N. "Operator" means any person who is directly involved in or may be responsible for operation of any wastewater works or facilities treating wastewater.

O. "Population Equivalent (P.E.)" means the population which would contribute an equivalent waste load based on the calculation of total pounds of B.O.D. contributed divided by 0.2. This calculation may be used where a significant amount of industrial waste is discharged to a wastewater system.

P. "Restricted Certificate" means a certificate issued upon passing the certification examination when other requirements have not been met.

Q. "Small Lagoon System" means a wastewater lagoon system designed to serve fewer than 3500 design population equivalent.

R. "Wastewater Works" means facilities for collecting, pumping, treating or disposing of sanitary wastewater.

R317-10-5. Wastewater Works Owner Responsibilities.

A. The chief operator and supervisors who make process decisions for the system and are designated to be in direct responsible charge must be certified at no less than the level of the facility classification. All other operators in direct responsible charge must be certified at no less than one grade lower than the facility classification or at the lowest required facility classification except as provided in B below. All facilities must have an operator certified at the facility level on duty or on call. If a facility or system undergoes a re-rating, all operators considered to be in DRC must be certified at the appropriate level within one year after notification of the new rating.

B. The Executive Secretary must be notified by the facility owner within 10 working days after termination of employment of the Chief Operator considered in DRC, or when he is otherwise unable to perform those duties. The wastewater works must have a certified operator or an operator with a restricted certificate at the appropriate level within one year from the date the vacancy occurred.

C. For newly constructed wastewater works, a certified operator or an operator with a restricted certificate at the appropriate level must be employed within one year after the system is deemed operable.

D. Those required to be certified may operate a system with a restricted certificate of the required grade for up to one year for a Class I or Class II facility, or up to two years for a Class III or Class IV facility, but may not continue to operate a system if they are unable to obtain an unrestricted certificate at the end of the stipulated period.

E. Contracts

1. General. In lieu of employing a DRC operator as part of its workforce, a facility owner may enter into a contract for DRC services with an operator certified at the appropriate level, or with another public or private entity with operators certified at the appropriate level.

2. Any such contract must be reviewed and approved by the Executive Secretary.

3. If the contract is with another entity, it must include the

names of the certified individuals who will be in direct responsible charge of the operation of the facility. At a minimum the contract must contain the following elements:

a. A clear description of the overall duties and responsibilities of the facility owner and the responsibilities of the contracted DRC operator(s) related to the supervision of the facility's operation, including the frequency of visits and the duties to be performed.

b. Identification of the contract period and effective date of the contract

c. Consideration

d. Termination clause

e. Execution by authorized signatories

R317-10-6. Facility Classification System.

Treatment plants and collection systems shall be classified in accordance with Table 1.

TABLE 1
FACILITY CLASSIFICATION SYSTEM

FACILITY CATEGORY		CLASS I	II	III	IV
Collection (1)	Pop. Served	3,500 and less	3,501 to 15,000	15,001 to 50,000	50,001 and greater
Treatment Plant (2)	Range of Fac. Points	30 and less	31 to 55	56 to 75	76 and greater
Small Lagoon Systems(3)	Design Pop. Equiv.	3,500 and less			

(1) Simple "in-line" treatment (such as booster pumping, preventive chlorination, or odor control) is considered an integral part of a collection system.

(2) Treatment plants shall be assigned "facility points" in accordance with Table 2 "Wastewater Treatment Plant Classification System".

(3) A combined certificate shall be issued for treatment works/collection system operation.

TABLE 2
WASTEWATER TREATMENT PLANT CLASSIFICATION SYSTEM

Each Unit process should have points assigned only once.

Item	Points
SIZE (2 PT Minimum - 20 PT Maximum)	
Max. Population equivalent (PE) served, peak day(1)	1 - 10
Design flow average day or peak month average, whichever is larger(2)	1 - 10
VARIATION IN RAW WASTE (3)	
Variations do not exceed those normally or typically expected	0
Recurring deviations or excessive variations of 100 - 200% in strength and/or flow	2
Recurring deviations or excessive variations of more than 200% in strength and/or flow	4
Raw wastes subject to toxic waste discharges	6
Acceptance of septage or truck-hauled waste	2
PRELIMINARY TREATMENT	
Plant pumping of main flow	3
Screening, comminution	3
Grit removal	3
Equalization	1
PRIMARY TREATMENT	
Clarifiers	5
Imhoff tanks or similar	5
SECONDARY TREATMENT	
Fixed film reactor	10
Activated sludge	15
Stabilization ponds w/o aeration	5
Stabilization ponds w/aeration	8
TERTIARY TREATMENT	
Polishing ponds for advanced waste treatment	2
Chemical/physical advanced waste treatment w/o secondary	15
Chemical/physical advanced waste treatment following secondary Biological or chemical/biological advanced waste treatment	10 12
Nitrification by designed extended aeration only	2
Ion exchange for advanced waste treatment	10
Reverse osmosis, electrodialysis and other membrane filtration techniques	15
Advanced waste treatment chemical recovery, carbon regeneration	4
Media Filtration	5
ADDITIONAL TREATMENT PROCESSES	
Chemical additions (2 pts./each for max. of 6 pts.)	2 - 6
Dissolved air flotation (for other than sludge thickening)	8
Intermittent sand filter	2
Recirculating intermittent sand filter	3
Microscreens	5
Generation of oxygen	5
SOLIDS HANDLING	
Solids conditioning	2
Solids thickening (based on technology)	2 - 5
Mechanical dewatering	8
Anaerobic digestion of solids	10
Utilization of digester gas for heating or cogeneration	5
Aerobic digestion of solids	6
Evaporative sludge drying	2
Solids reduction (including incineration, wet oxidation)	12
On-site landfill for solids	2
Solids composting	10
Land application of biosolids by contractor	2
Land application of biosolids under direction of facility operator in DRC	10
DISINFECTION (10 pt. max.)	
Chlorination or ultraviolet irradiation	5
Ozonation	10
EFFLUENT DISCHARGE (10 pt. max.)	
Mechanical Post aeration	2
Direct recycle and reuse	6
Land treatment and disposal (surface or subsurface)	4
INSTRUMENTATION (6 pt. max.)	
Use of SCADA or similar instrumentation systems to provide data with no process operation	0
Use of SCADA or similar instrumentation systems to provide data with limited process operation	2
Use of SCADA or similar instrumentation systems to provide data with moderate process operation	4
Use of SCADA or similar instrumentation systems to provide data with extensive/total process operation	6
LABORATORY CONTROL (15 pt. max)(4)	
Bacteriological/biological (5 pt. max):	
Lab work done outside the plant	0
Membrane filter procedures	3
Use of fermentation tubes or any dilution method (or E. coli determination)	5
Chemical/physical (10 pt. max):	
Lab work done outside the plant	0
Push-button, visual methods for simple tests (i.e. pH, settleable solids)	3
Additional procedures (ie, DO, COD, BOD, gas analysis, titrations, solids volatile content)	5
More advanced determinations (ie, specific constituents; nutrients, total oils, phenols)	7
Highly sophisticated instrumentation (i.e., atomic absorption, gas chromatography)	10

(1) 1 point per 10,000 P.E. or part; maximum of 10 points

(2) 1 point per MGD or part

(3) Key concept is frequency and/or intensity ofdeviation or excessive variation from normal or typical fluctuations; such deviation may be in terms of strength, toxicity, shock loads, inflow and infiltration, with point values ranging from 0 - 6.

(4) Key concept is to credit laboratory analyses done

on-site by plant personnel under the direction of the operator in direct responsible charge with point values ranging from 0 - 15.

R317-10-7. Qualifications for Operator Grades.

A. General

1. "Qualification Points" means total of years of education and experience required. All substitutions are year for year equivalents. A college "year" is considered 45 quarter hours or 30 semester hours of credit.

2. College-level education must be in a job-related field to be credited. However, partial credit may be given for non-job related education at the discretion of the Council.

3. Experience may be substituted for a high school education or a graduate equivalence degree in Grades I and II only.

4. Education may be substituted for experience, as specified below.

B. Grade I - 13 points required

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. One year operating experience (one point per year).

3. Experience may be substituted for all or any part of the education requirements, on a one-to-one basis.

4. Education may not be substituted for experience.

C. Grade II - 14 points required

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Two years operating experience (one point per year)

3. Up to one year of additional education may be substituted for an equivalent amount of operating experience.

4. Experience may be substituted for all or any part of the education requirement, on a one-to-one basis.

D. Grade III - 16 points required

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Four years operating experience (one point per year)

3. Up to 2 years of additional education may be substituted for an equivalent amount of operating experience. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to 1 year of education.

4. At least one year of the operating experience must have been at a Class II facility or higher.

E. Grade IV - 18 points required

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points)

2. Six years operating experience (one point per year)

3. Up to 2 years of additional education may be substituted for an equivalent amount of operating experience. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to 1 year of education.

4. At least two years of the operating experience must have been at a Class III facility or higher.

R317-10-8. Council.

A. Members of the Council shall be appointed by the Board from recommendations made by interested organizations including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, the Professional Wastewater Operators Division of the Water Environment Association of Utah, the Utah Rural Water Association, Utah Valley State College, and the Civil/Environmental Engineering Departments of Utah's universities. The Council shall serve at the discretion of the Board to oversee the certification program.

B. The Council shall consist of eight members as follows:

1. Three members who are operators holding valid certificates. At least one shall be a wastewater collection system operator.

2. One member with three years management experience in wastewater treatment and collection, who shall represent municipal wastewater management.

3. One member who is a civil or environmental engineering faculty member of a university in Utah.

4. One non-voting member who is a Senior Environmental Engineer in the Division of Water Quality or other duly designated person who shall represent the Board.

5. One member from the private sector.

6. One member representing vocational training.

C. Voting Council members shall serve as follows:

1. Terms of office shall be for three years with two members retiring each year (except for the third year when three shall retire).

2. Appointments to succeed a Council member who is unable to serve his full term shall be for the remainder of the unexpired term.

3. Council members may be reappointed, but they do not automatically succeed themselves.

D. Each year the Council shall elect from its membership a Chairman and Vice Chairman.

E. The duties of the Council shall include:

1. Preparing and conducting examinations for the various grades of operators, and issuing and distributing the certificates.

2. Regularly reviewing the certification examinations to ensure compatibility between the examinations and operator responsibilities.

3. Ensuring that the certification examinations and training curricula are compatible.

4. Distributing examination applications and notices.

5. Receiving all applications for certification and evaluating the record of applicants as required to establish their qualifications for certification under this rule.

6. Maintaining records of operator qualifications and certification.

7. Preparing an annual report for distribution to the Board and other interested parties.

F. A majority of voting members shall constitute a quorum for the purpose of transacting official Council business.

R317-10-9. Application for Examination.

Prior to taking an examination, an applicant must file an application of intention with the Council, accompanied by evidence of qualifications for certification in accordance with the provisions of this rule on application forms available from the Council.

R317-10-10. Examination.

A. The time and place of examinations to qualify for a certificate shall be determined by the Council. All examinations shall be graded and the applicant notified of the results. Examination fees shall be charged to cover the costs of testing.

B. Normally, all examinations for certification shall be written. However, upon request an oral examination will be given. Such examination shall be conducted by at least two Council members in a manner that will ensure the integrity of the certification program.

C. In the event an applicant fails an exam, the applicant may request to review the exam within 30 days following receipt of the exam score. The Council shall not review examination questions for the purpose of changing individual examination scores. However, questions may be edited for future examinations. If an error is found in the grading of the exam, credit may be given.

R317-10-11. Certificates.

A. All certificates shall indicate one of the following grades for which they are issued.

1. Wastewater Treatment Operator - Grades I through IV.
2. Restricted Wastewater Treatment Operator - Grades I through IV.
3. Wastewater Collection Operator - Grades I through IV.
4. Restricted Wastewater Collection Operator - Grades I through IV.
5. Small Lagoon System Operator - Grade I Wastewater Treatment and Collection System Combined.
6. Restricted Small Lagoon System Operator - Grade I Wastewater Treatment and Collection System Combined.

B. An applicant shall have the opportunity to take any grade of examination higher than the classification of the system which he or she operates. A restricted certificate shall be issued if the applicant passes the exam but lacks the experience or education required for a particular grade.

An unrestricted certificate shall be issued if the applicant passes the exam and the experience and education requirements appropriate to the particular grade are met. Restricted certificates shall become unrestricted when the appropriate experience and education requirements are met and a change in status fee is paid. A restricted certificate does not qualify a person as a certified operator at the grade level that the restricted certificate is issued, until the limiting conditions are met, except as provided in R317-10-5. Upon application, a restricted certificate may be renewed subject to the conditions in C below. Replacement certificates may be obtained by payment of a duplicate certificate fee.

C. Certificates shall continue in effect for a period of up to three years unless revoked prior to that time. The certificate must be renewed each three years by payment of a renewal fee and submittal of evidence of required CEUs. The certificates expire on December 31 of the last year of the certificate. Operators considered in DRC must renew by the expiration date in order for the wastewater works to remain in compliance with this rule. Request for renewal shall be made on forms supplied by the Council. It shall be the responsibility of the operator to make application for certificate renewal.

D. An expired certificate may be reinstated within three months after expiration by payment of a reinstatement fee. After three months, an expired certificate cannot be reinstated, and the operator must retest to become certified. The required CEUs for renewal must be accrued before expiration of the certificate.

E. CEUs must be earned during the 3 year period prior to the expiration date of the certificate.

F. The Council may, after appropriate review, waive examination of applicants holding a valid certificate or license issued in compliance with other certification plans having equivalent standards, and issue a comparable Utah certificate upon payment of a reciprocity fee.

If the applicant is working in another state at the time of application, or has relocated to Utah but has not yet obtained employment in the wastewater field in Utah, a letter of intent to issue a certificate by reciprocity may be provided. When the applicant provides proof of employment in the wastewater field in Utah, and meets all other requirements, a certificate may be issued.

G. A grandfather certificate shall be issued, upon application and payment of an administrative fee, to qualified operators who must be certified (chief operators, supervisors, or anyone considered in direct responsible charge). The certificate shall be valid only for the wastewater works at which the operator is employed as that facility existed on March 16, 1991. Operators must obtain initial certification on or before March 16, 1994. The certificate may not be transferred to another facility or person. If the facility undergoes an addition of a new process, even if the facility classification does not change, or the collection system has a change in rating, the respective operator must obtain a restricted or unrestricted certificate within one year as specified in this rule.

Grandfather certificates shall be issued for a period of up to three years and must be renewed prior to the expiration date to remain in effect. Renewal shall include the payment of a renewal fee and submittal of evidence of required CEUs. The renewal fee shall be the same as that charged for renewal of other certificates. If the grandfather certificate is not renewed prior to the expiration date, the wastewater works may be considered to be out of compliance with this rule. The operator would then be required to pass the appropriate certification examination to become a certified operator.

The grandfather certificate shall be issued if the currently employed operator:

1. Was a chief operator or person in direct responsible charge of the wastewater works on March 16, 1991; and
2. Had been employed at least ten years in the operation of the wastewater works prior to March 16, 1991; and
3. Demonstrates to the Council his capability to operate the wastewater works at which he is employed by providing employment history and references.

R317-10-12. CEUs and Approved Training.

A. CEUs shall be required for renewal of each certificate according to the following schedule:

TABLE 3
REQUIRED CEUs FOR RENEWAL OF EACH CERTIFICATE

OPERATOR GRADE	CEUs REQUIRED IN A 3-YEAR PERIOD
Grade I	2
Grade II	2
Grade III	3
Grade IV	3

B. All CEUs for certificate renewal shall be subject to review for approval to ensure that the training is applicable to wastewater works operation and meets CEU criteria. Identification of approved training, appropriate CEU or credit assignment and verification of successful completion is the responsibility of the Council. Training records shall be maintained by the Council.

C. All in-house or in-plant training which is intended to meet any part of the CEU requirements must be approved by the Council. In-house or in-plant training must meet the following general criteria to be approved:

1. Instruction must be under the supervision of an instructor approved by the Council.
2. An outline must be included with all submittals listing subjects to be covered and the time allotted to each subject.
3. A list of the teacher's objectives must be submitted which documents the essential points of the instruction ("need-to-know" information) and the methods used to illustrate these principles.

D. No more than one-half of required CEU credits, over a three-year period prior to the expiration date of a certificate, shall be given for registration and attendance at the annual technical program meetings of the Water Environment Association of Utah, the Water Environment Federation, Rural Water Association of Utah, or similar organizations.

E. Training must be related to the responsibilities of a wastewater works operator. If a person holds multiple wastewater operator certificates (treatment and collection), CEU credit may be received for each certificate from one training experience only if the training is applicable to each certificate. It is recommended that at least one-half of the required CEUs be technical training directly related to the job duties.

R317-10-13. Recommendations of the Council.

A. Initial recommendations. All decisions of the Council shall be in the form of recommendations for action by the Executive Secretary. The Council shall notify an applicant of

any initial recommendation. Any such applicant may, within 30 days of the date the Council's notice was mailed, request reconsideration and an informal hearing before the Council by writing to: Wastewater Operator Certification Council, Division of Water Quality, Department of Environmental Quality, State of Utah, Salt Lake City, Utah 84114-4870. The Council shall notify the person of the time and location for the informal hearing.

B. Following the informal hearing, or the expiration of the period for requesting reconsideration, the Council shall notify the Executive Secretary of its final recommendation.

C. A challenge to the Executive Secretary's determination regarding Certification may be made as provided in R317-9-3.

R317-10-14. Certificate Suspension and Revocation Procedures.

A. Grounds for suspending or revoking an operator's certificate may be any of the following:

1. Demonstrated disregard for the public health and safety;

2. Misrepresentation or falsification of figures and/or reports submitted to the State;

3. Cheating on a certification exam;

4. Falsely obtaining or altering a certificate; or

5. Gross negligence, incompetence or misconduct in the performance of duties as an operator.

B. Suspension or revocation may result where it may be shown that circumstances and events relative to the operation of the wastewater works were under the operator's jurisdiction and control. Circumstances beyond the control of an operator shall not be grounds for suspension or revocation action.

C. The Council may make recommendations to the Executive Secretary regarding the suspension or revocation of a certificate. Prior to making any such recommendation, the Council shall inform the individual in writing of the reasons the Council is considering such a recommendation. The Council shall allow the individual an opportunity for an informal hearing before the Council. Any request for an informal hearing shall be made within 30 days of the date the Council's notification is mailed.

D. Following an informal hearing, or the expiration of the period for requesting a hearing, the Council shall notify the Executive Secretary of its final recommendation.

E. A challenge to the Executive Secretary's determination may be made as provided in R317-9-3.

R317-10-15. Noncompliance.

A. Noncompliance with these Certification rules is a violation of Section 19-5-115 Utah Code Annotated.

B. The Council shall refer cases of noncompliance with this rule to the Executive Secretary.

KEY: water pollution, operator certification, wastewater treatment
April 20, 2005 19-5
Notice of Continuation October 7, 2002

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-14. Home Health Service.
R414-14-1. Introduction and Authority.

1. Home health services are part-time intermittent health care services that are based on medical necessity and provided to eligible persons in their places of residence when the home is the most appropriate and cost effective setting that is consistent with the client's medical need. The goals of home health care are to minimize the effects of disability or pain; promote, maintain, or protect health; and prevent premature or inappropriate institutionalization.

2. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.70.

R414-14-2. Definitions.

1. "Home health agency" means a public agency or private organization that is licensed by the Department as a home health agency under the authority of Utah Code Title 26, Chapter 21, and in accordance with Utah Administrative Code R432-700. A home health agency is primarily engaged in providing skilled nursing service and other therapeutic services.

2. "Plan of Care" means a written plan developed cooperatively by home health agency staff and the attending physician. The plan is designed to meet specific needs of an individual, is based on orders written by the attending physician, and is approved and periodically reviewed and updated by the attending physician.

3. "Prior authorization" means that degree of approval for payment of services required to be obtained from Division of Health Care Financing staff by a licensed provider before the service is provided.

R414-14-3. Client Eligibility Requirements.

Home health services are available to categorically eligible and medically needy individuals.

R414-14-4. Program Access Requirements.

1. Home health service shall be provided only to an individual who is under the care of a physician. The attending physician shall write the orders on which a plan of care is established and certify the necessity for home health services.

2. The home health agency may accept a recipient for home health care only if there is a reasonable expectation that a recipient's needs can be met adequately by the agency in the recipient's place of residence.

3. The attending physician and home health agency personnel must review and sign a total plan of care shall as often as the severity of the patient's condition requires, but at least once every 60 days in accordance with 42 CFR 440.70.

4. The home health agency must provide quality, cost-effective care and a safe environment in the home through registered or licensed practical nurses who have adequate training, knowledge, judgement, and skill.

5. Home health aide services may only be provided pursuant to written instructions and under the supervision of a registered nurse by a person selected and trained to assist with routine care not requiring specialized nursing skills.

6. Over the long term service period, the cost to provide the required care and service in the patient's home must be no greater than the cost to meet the client's medical needs in an alternative setting.

7. A home health agency may provide an initial assessment visit without prior authorization to assess the patient's needs and establish a plan of care. After the initial visit, all home health care and service must be based on prior authorization.

R414-14-5. Service Coverage.

1. Two levels of home health service are covered: Skilled Home Health Care and Supportive Maintenance Home Health Care.

2. Skilled nursing service encompasses the expert application of nursing theory, practice and techniques by a registered professional nurse to meet the needs of patients in their place of residence through professional judgments, through independently solving patient care problems, and through application of standardized procedures and medically delegated techniques.

3. Home health aide service encompasses assistance with, or direct provision of, routine care not requiring specialized nursing skill. The home health aide is closely supervised by a registered, professional nurse to assure competent care. The aide works under written instructions and provides necessary care for the patient.

4. Supportive maintenance home health care serves those patients who have a medical condition which has stabilized, but who demonstrate continuing health problems requiring minimal assistance, observation, teaching, or follow-up. This assistance can be provided by a certified home health agency through the knowledge and skill of a licensed practical nurse (LPN) or a home health aide with periodic supervision by a registered nurse. A physician continues to provide direction.

5. IV therapy, enteral and parenteral nutrition therapy are provided as a home health service either in conjunction with skilled or maintenance care or as the only service to be provided. Specific policy is outlined in the medical supplies program and all requirements of the home health program must be met in relation to orders, plan of care, and 60 day review and recertification.

6. Physical therapy and speech pathology services are occasionally indicated and approved for the patient needing home health service. Any therapy services offered by the home health agency directly or under arrangement must be ordered by a physician and provided by a qualified licensed therapist in accordance with the plan of care.

7. Medical supplies utilized for home health service must be suitable for use in the home in providing home health care, consistent with physician orders, and approved as part of the plan of care.

8. Medical supplies provided by the home health agency do not require prior approval, but are limited to:

(a) supplies used during the initial visit to establish the plan of care;

(b) supplies that are consistent with the plan of care; and

(c) non-durable medical equipment.

9. Supportive maintenance home health care is limited in time equal to one visit per day determined by care needs and care giver participation.

10. A registered nurse employed by an approved, certified home health agency must supervise all home health services. Nursing service and all approved therapy services must be provided by the appropriate licensed professional.

11. Only one home health provider (agency) may provide service to a patient during any period of time. However, a subcontractor of a home health provider may provide service if the original agency is the only provider that bills for services. A second provider or agency requesting approval of service will be denied.

12. Home health care provided to a patient capable of self care is not a covered Medicaid benefit.

13. Personal care services, except as determined necessary in providing skilled care, is not a covered home health benefit.

14. Housekeeping or homemaking services are not covered home health benefits.

15. Occupational therapy is not a covered Medicaid benefit except for children covered under CHEC for medically necessary service.

16. Home health nursing service beyond the initial

evaluation visit requires prior authorization.

17. All home health service beyond the initial visit, including supplies and therapies, shall be in the plan of care that the home health agency submits for prior authorization. Prior to providing the service, the home health agency must first obtain approval for the level of skilled or maintenance service based on the prior authorization request and a review of the plan of care. If level of service needs change, the home health agency must submit a new prior authorization request.

18. A home health agency may provide therapy services only in accordance with medical necessity and after receiving prior authorization.

R414-14-6. Reimbursement for Services.

Reimbursement for home health services shall be provided as documented in the Utah State Medicaid Plan, ATTACHMENT 4.19-B. The fee schedule was established after examining usual and customary charges in the industry, applying appropriate discounts, and relying on professional judgment.

KEY: Medicaid
April 26, 2005 26-1-5
Notice of Continuation October 6, 2004 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-33C. Targeted Case Management for the Homeless.
R414-33C-1. Introduction and Authority.

(1) This rule outlines targeted case management services that are available to homeless Medicaid clients.

(2) This rule is authorized under UCA 26-18-3 and implements 42 USC 1396n(g), which authorizes targeted case management services.

R414-33C-2. Definitions.

In this rule, "CHEC" means Child Health Evaluation and Care and is Utah's version of the federally mandated Early Periodic Screening, Diagnosis and Treatment (EPSDT) program. All Medicaid clients from birth through age twenty who are in the Traditional Medicaid Plan are eligible for the CHEC program.

R414-33C-3. Client Eligibility Requirements.

Targeted case management services are available to homeless Medicaid clients enrolled in the Non-Traditional Medicaid Plan, pregnant women, and CHEC-eligible Medicaid recipients enrolled in the Traditional Medicaid Plan who:

(1) reside in Salt Lake, Summit, Wasatch, Weber, or Utah County emergency homeless shelters;

(2) do not otherwise have a permanent address, residence, or facility in which they could reside;

(3) do not live in a boarding home, residential treatment facility, or facility that houses only victims of domestic abuse; or

(4) have left the homeless shelter and require continued targeted case management to prevent a recurrence of homelessness.

R414-33C-4. Program Access Requirements.

(1) Targeted case management services may be provided only by an emergency homeless shelter in Salt Lake, Summit, Wasatch, Weber, or Utah County that is capable of providing temporary shelter for at least 30 days in order to assure that sufficient case management services are provided to successfully reintegrate the homeless individual into the community.

(2) A qualified targeted case manager case must complete a management needs assessment that documents that:

(a) the individual requires treatment or services from a variety of agencies and providers to meet the individual's medical, social, educational, and other needs; and

(b) there is reasonable indication that the individual will access needed services only if assisted by a qualified targeted case manager who, in accordance with an individualized case management service plan, locates, coordinates, and regularly monitors the services.

R414-33C-5. Service Coverage.

(1) Targeted case management services include:

(a) assessing and documenting the client's potential strengths, resources and needs;

(b) developing a written, individualized, and coordinated case management service plan:

(i) that assures adequate access to medical, social, educational, and other related services; and

(ii) that is developed with input from the client, family, and other agencies knowledgeable about the client's needs;

(c) linking the client with community resources and needed services, including assisting the client to establish and maintain eligibility for entitlements other than Medicaid;

(d) coordinating the delivery of services to the client, including CHEC screenings, follow-up, and consultation with other agencies to ensure that the most appropriate interventions and services are provided by all agencies and providers involved in the client's care;

(e) monitoring and coordinating prescribed medications with professionals to ensure that all medications are appropriate, as well as providing information on the client's medication regimen to other prescribers, agencies, and providers involved in the client's care;

(f) periodically assessing and monitoring the client's status and functioning and modifying the targeted case management service plan as needed;

(g) monitoring to assure that appropriate and quality service is delivered in a timely manner;

(h) instructing the client or caretaker, as appropriate, to independently access needed services; and

(i) monitoring the client's progress and continued need for targeted case management and other services.

(2) The agency may bill Medicaid for the above activities only if the activities are identified in the case management service plan and the time spent in the activity involves a face-to-face encounter and telephone or written communication with the client, family, caretaker, service provider, or other individual with a direct involvement in providing or assuring that the client obtains the necessary services documented in the service plan.

(3) Targeted case management services provided to a hospital or nursing facility patient are limited to a maximum of five hours per admission.

R414-33C-6. Qualified Providers.

Targeted case management services must be provided by an individual employed by or under contract with the emergency homeless shelter who is:

(1) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed professional counselor, a licensed marriage and family counselor; or

(2) an individual working toward licensure in one of the professions identified in subsection (1) to the extent permitted by Utah Code Title 58; or

(3) a licensed practical nurse or a non-licensed individual working under the supervision of one of the individuals identified in subsection (1) or (2).

R414-33C-7. Reimbursement Methodology.

The Department pays the lower of the amount billed and the rate on the fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay clients.

KEY: Medicaid
April 7, 2005 **26-1-5**
26-18-3

R501. Human Services, Administration, Administrative Services, Licensing.
R501-19. Residential Treatment Programs.
R501-19-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office of Licensing shall license residential treatment programs according to the following rules.

R501-19-2. Purpose.

Residential treatment programs offer room and board and provides for or arranges for the provision of specialized treatment, rehabilitation or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential treatment programs, consumers are assisted in acquiring the social and behavioral skills necessary for living independently in the community in accordance with Subsection 62A-2-101(15).

R501-19-3. Definition.

Residential treatment program means a 24-hour group living environment for four or more individuals unrelated to the owner or provider in accordance with Subsection 62A-2-101(15).

R501-19-4. Administration.

A. In addition to the following rules, all Residential Treatment Programs shall comply with R501-2, Core Standards.

B. A current list of enrollment of all registered consumers shall be on-site at all times.

R501-19-5. Staffing.

A. The program shall have an employed manager who is responsible for the day to day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute available.

B. The program shall have a staff person trained, by a certified instructor, in standard first aid and CPR on duty with the consumers at all times.

C. Programs which utilize students and volunteers, shall provide screening, training, and evaluation of volunteers. Volunteers shall be informed verbally and in writing of program objectives and scope of service.

D. Professional staff shall include the following individuals who have received training in the specific area listed below:

1. Mental Health

a. a licensed physician or consulting licensed physician,

b. a licensed psychologist, or consulting licensed psychologist,

c. a licensed mental health therapist,

d. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or a consulting advanced practice registered nurse-psychiatric mental health nurse specialist, and

e. if unlicensed staff are used, they shall be supervised by a licensed clinical professional.

2. Substance Abuse

a. a licensed physician, or a consulting licensed physician,

b. a licensed psychologist or consulting licensed psychologist,

c. a licensed mental health therapist or consulting licensed, mental health therapist, and

d. a licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

3. Children and Youth

a. a licensed physician, or consulting licensed physician,

b. a licensed psychologist, or consulting licensed psychologist, and

c. a licensed mental health therapist or consulting licensed mental health therapist, to provide a minimum of one hour of service to the program per week per consumer enrolled.

d. A licensed medical practitioner, by written agreement, shall be available to provide, as needed, a minimum of one hour of service per week for every two consumers enrolled.

e. Other staff trained to work with emotionally and behaviorally disturbed, or conduct disordered children and youth shall be under the supervision of a licensed clinical professional.

f. A minimum of two staff on duty and, a staff ratio of no less than one staff to every four consumers shall exist at all times, except nighttime sleeping hours when staff may be reduced.

g. A mixed gender population shall have at least one male and one female staff on duty at all times.

4. Services for People With Disabilities shall have a staff person responsible for program supervision and operation of the facility. Staff person shall be adequately trained to provide the services and treatment stated in the consumer plan.

R501-19-6. Direct Service.

Treatment plans shall be reviewed and signed by the clinical supervisor. Treatment plans shall be reviewed and signed by the clinical supervisor, or other qualified individuals for Division of Services for People With Disabilities services. Plans shall be reviewed and signed as noted in the treatment plan.

R501-19-7. Physical Facilities.

A. The program shall provide written documentation of compliance with the following items as applicable:

1. local zoning ordinances,
2. local business license requirements,
3. local building codes,
4. local fire safety regulations,
5. local health codes, and
6. local approval from the appropriate government agency for new program services or increased consumer capacity.

B. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

R501-19-8. Physical Environment.

A. Live-in staff shall have separate living space with a private bathroom.

B. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

C. Indoor space for free and informal activities of consumers shall be available.

D. Provision shall be made for consumer privacy.

E. Space shall be provided for private and group counseling sessions.

F. Sleeping Space

1. No more than four persons, or two for Division of Services for People With Disabilities programs, shall be housed in a single bedroom.

2. A minimum of sixty square feet per consumer shall be provided in a multiple occupant bedroom. Storage space will not be counted.

3. A minimum eighty square feet per individual shall be provided in a single occupant bedroom. Storage space will not be counted.

4. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a

screened window that opens.

5. Each bed, none of which shall be portable, shall be solidly constructed, and be provided with clean linens after each consumer stay and at least weekly.

6. Sleeping quarters serving male and female residents shall be structurally separated.

7. Consumers shall be allowed to decorate and personalize bedrooms with respect for other residents and property.

G. Bathrooms

1. The program shall have separate bathrooms for males and females. These shall be maintained in good operating order and in a clean and safe condition.

2. Bathrooms shall accommodate consumers with physical disabilities as required.

3. Each bathroom shall be properly equipped with toilet paper, towels, soap, and other items required for personal hygiene.

4. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

5. Bathrooms shall meet a minimum ratio of one toilet, one lavatory, and one tub or shower for each six residents.

6. There shall be toilets and baths or showers which allow for individual privacy.

7. There shall be mirrors secured to the walls at convenient heights.

8. Bathrooms shall be located as to allow access without disturbing other residents during sleeping hours.

H. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs.

I. All furniture and equipment shall be maintained in a clean and safe condition.

J. Programs which permit individuals to do their own laundry shall provide equipment and supplies for washing, drying, and ironing.

K. Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing.

L. Laundry appliances shall be maintained in a clean and safe operating condition.

R501-19-9. Food Service.

A. One staff shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

B. The staff responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumers service record information relating to special nutritional needs and provide for nutrition counseling where indicated.

C. The program shall establish and post kitchen rules and privileges according to consumer needs.

D. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.

E. Meals may be prepared at the facility or catered.

F. Kitchens shall have clean, safe, and operational equipment for the preparation, storage, serving, and clean up of all meals.

G. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.

H. When meals are prepared by consumers there shall be a written policy to include the following:

1. rules of kitchen privileges,
2. menu planning and procedures,
3. nutritional and sanitation requirements, and
4. schedule of responsibilities.

R501-19-10. Medication.

A. The program shall have locked storage for medications.

B. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

C. Prescriptive medication shall be provided as prescribed by a qualified physician, according to the Medical Practices Act.

D. The program shall have designated qualified staff, who shall be responsible to:

1. administer medication,
2. supervise self-medication,
3. record medication, including time and dosage, according to prescription, and
4. record effects of medication.

R501-19-11. Specialized Services for Substance Abuse.

A. The program shall not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious.

B. At a minimum, the program shall document that direct service staff complete standard first aid and CPR training within six months of being hired. Training shall be updated as required by the certifying agency.

C. Before admission, consumers shall be tested for Tuberculosis. Both consumers and staff shall be tested annually or as directed by the local health authority.

R501-19-12. Specialized Services for Programs Serving Children and Youth.

A. Provisions shall be available for adolescents to continue their education with a curriculum approved by the State Office of Education.

B. Programs which provide their own school shall be recognized by an educational accreditation organization, i.e., State Board of Education or the National School Accreditation Board.

C. Individual, group, couple, and family counseling sessions or other appropriate treatment, including skills development, shall be conducted at least weekly, or more often if defined by the treatment plan. The consumer's record shall document the time and date of the service provided and include the signature of the counselor.

D. An accurate record shall be kept of all funds deposited and withdrawn with the residential facility for use by a consumer. Consumer purchases of over $20.00 per item, shall be substantiated by receipts signed by the consumer and appropriate staff.

R501-19-13. Specialized Services for Division of Services for People With Disabilities.

A. Rules governing the daily operation and activities of the facility shall be available to all consumers and visitors, and shall apply to family members, consumers, and staff that come into the facility.

B. The program shall have policy specifying the amount of time family or friends may stay as overnight guests.

C. All consumers in residential programs shall have an individual plan that addresses appropriate day treatment.

D. A monthly schedule of activities shall be shared with the consumer and available on request. Schedules shall be filed and maintained for review.

E. A record of income, earned, unearned, and consumer service fees, shall be maintained by the provider.

F. Residential facilities shall be located where school, church, recreation, and other community facilities are available.

G. An accurate record shall be kept of all funds deposited with the residential facility for use by a consumer. This record shall contain a list of deposits and withdrawals. Consumer purchases of over $20.00, per item, shall be substantiated by

receipts signed by the consumer and professional staff. A record shall be kept of consumer petty cash funds.

H. The program, in conjunction with the parent or guardian and the Division of Services for People With Disabilities support coordinator, shall apply for unearned income benefits for which a consumer is entitled.

KEY: human services, licensing
May 2, 2000 62A-2-101 et seq.
Notice of Continuation April 25, 2005

R501. Human Services, Administration, Administrative Services, Licensing.
R501-20. Day Treatment Programs.
R501-20-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office of Licensing, shall license day treatment programs according to the following rules.

R501-20-2. Purpose.

A day treatment program provides services to individuals who have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies. Day treatment is provided in lieu of, or in coordination with, a more restrictive residential or inpatient environment or service in accordance with Subsection 62A-2-101(4).

R501-20-3. Definition.

Day treatment program means specialized treatment for less than 24 hours a day, for four or more persons who are unrelated to the owner or provider pursuant to Subsection 62A-2-101(4).

R501-20-4. Administration.

A. In addition to the following rules, all Day Treatment Programs shall comply with R501-2, Core Standards.

B. A list of current consumers shall be available and on-site at all times.

R501-20-5. Staffing.

A. The program shall have an employed manager who is responsible for the day to day supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent, there shall be a substitute available.

B. The program shall have a staff person trained, by a certified instructor, in first aid and CPR on duty with the consumers at all times.

C. Staffing Ratios

1. The minimum ratio shall be one direct care staff to ten consumers. In Division of Services for People With Disabilities programs, consumer ratios shall be determined by type of activity.

2. When 10% or more of the consumers are non-ambulatory, the ratio shall be one direct care staff to seven consumers.

D. Professional staff shall include the following individuals who have received training in the specific area listed below:

1. Mental Health

a. a licensed physician, or consulting licensed physician,

b. a licensed psychologist, or consulting licensed psychologist,

c. a licensed mental health therapist or consulting licensed mental health therapist, and

d. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or a consulting licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

e. If unlicensed staff are used they shall be supervised by a licensed clinical professional.

2. Substance Abuse

a. a licensed physician or consulting licensed physician,

b. a licensed psychologist or consulting licensed psychologist,

c. a licensed mental health therapist or consulting licensed mental health therapist, and

d. a licensed substance abuse counselor or unlicensed staff who work with substance abuses shall be supervised by a licensed clinical professional.

3. Children and Youth

a. a licensed physician, or consulting licensed physician,

b. a licensed psychologist, or consulting licensed psychologist,

c. a licensed mental health therapist or consulting licensed mental health therapist, to provide a minimum of one hour of service per week per consumer enrolled in the program, and

d. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or consulting licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

e. If unlicensed staff are used, they shall be trained to work with emotionally and behaviorally disturbed, or conduct disordered children and youth and shall be under the supervision of a licensed clinical professional.

4. Services for People With Disabilities

a. a staff person responsible for consumer supervision and operation of the facility, and

b. trained staff to provide the services and treatment stated in the consumer's plan.

R501-20-6. Direct Service.

A. Day treatment activity plans shall be prepared to meet individual consumer needs. Daily activity plans may include behavioral training, community living skills, work activity, work adjustment, recreation, self-feeding, self-care, toilet training, social appropriateness, development of gross and fine motor skills, interpersonal adjustment, mobility training, self-sufficiency training, and to encourage optimal mental or physical function, speech, audiology, physical therapy, and psychological services, counseling, and socialization.

B. A daily activity or service schedule shall be designed and implemented.

C. While on-site, consumers shall be supervised as necessary and encouraged to participate in activities.

D. All consumers shall be afforded the same quality of care.

R501-20-7. Physical Environment.

A. The program shall provide written documentation of compliance with the following:

1. local zoning ordinances,
2. local business license requirements,
3. local building codes,
4. local fire safety regulations,
5. local health codes, and
6. local approval from the appropriate government agency for new program services or increased consumer capacity.

B. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

R501-20-8. Physical Facility.

A. The program shall have a minimum of fifty square feet of floor space per consumer designated specifically for day treatment. Hallways, office, storage, kitchens, and bathrooms will not be included in computation.

B. Outdoor recreational space and compatible recreational equipment shall be available when necessary to meet treatment plans.

C. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs and shall be maintained in a clean and safe condition.

D. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

E. Equipment

Equipment for work activities shall be kept in safe operating condition.

1. Power equipment shall be installed and maintained in accordance with the National Electrical Code.

2. When operating power equipment, the operator shall wear safe clothing and protective eye gear.

3. Rings and watches are not to be worn, and long hair shall be confined when operating power equipment.

4. Consumer exposure to hazardous materials shall be controlled as defined in Utah State Industrial Regulations.

F. Bathrooms

1. The program shall have one or more bathrooms each for males and females in accordance with current uniform building codes. They shall be maintained in good operating order and in a clean and safe condition.

2. Bathrooms shall accommodate consumers with physical disabilities as required.

3. Bathrooms shall be properly equipped with toilet paper, towels, soap, and other items required for personal hygiene.

4. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

R501-20-9. Food Service.

A. One person shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

B. The person responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumers service record information relating to special nutritional needs and provide for nutrition counseling where indicated.

C. When meals are prepared by consumers, there shall be a written policy to include the following:

1. rules of kitchen privileges,

2. menu planning and procedures,

3. nutritional and sanitation requirements, and

4. schedule of responsibilities.

D. The program shall provide adequate storage and refrigeration for meals carried to the program by consumers.

E. Kitchens shall have clean, operational equipment for the preparation, storage, serving, and clean up of all meals.

F. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.

R501-20-10. Medication.

A. Prescriptive medication shall be provided as prescribed by a qualified person according to the Medical Practices Act.

B. The program shall have locked storage for medication.

C. The program shall have written policy and procedure to include the following:

1. self administered medication,

2. storage,

3. control, and

4. release and disposal of drugs in accordance with federal and state regulations.

KEY: human services, licensing
May 2, 2000 62A-2-101 et seq.
Notice of Continuation April 21, 2005

R501. Human Services, Administration, Administrative Services, Licensing.
R501-21. Outpatient Treatment Programs.
R501-21-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office of Licensing, shall license outpatient treatment programs according to the following rules.

R501-21-2. Purpose.

Outpatient treatment programs shall serve consumers who require less structure than offered in day treatment or residential treatment programs. Consumers are provided treatment as often as determined and noted in the treatment plan.

R501-21-3. Definition.

Outpatient treatment program means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment in accordance with Subsection 62A-2-101(12).

R501-21-4. Administration.

A. In addition to the following rules, all Outpatient Treatment Programs shall comply with R501-2, Core Standards.

B. A current list of enrollment of all registered consumers shall be on-site at all times.

R501-21-5. Staffing.

Professional staff shall include at least one of the following individuals who has received training in the specific area listed below:

A. Mental Health

1. a licensed physician, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.
5. If unlicensed staff are used, they shall not supervise clinical programs. Unlicensed staff shall be trained to work with psychiatric consumers and be supervised by a licensed clinical professional.

B. Substance Abuse

1. a licensed physician, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.
5. A licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

C. Children and Youth

1. a licensed psychiatrist, or
2. a licensed psychologist, or
3. a licensed mental health therapist, or
4. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.
5. If the following individuals are used they shall not supervise clinical programs: A person with a graduate degree in counseling, psychiatric nursing, marriage and family therapy, social work or psychology who is working toward a clinical license, and has been approved by the Division of Occupational and Professional Licensing for the appropriate supervision, or a second year graduate student training for one of the above degrees.

D. Domestic Violence

1. a licensed psychiatrist, or
2. a licensed psychologist, or
3. a licensed clinical social worker, or
4. a licensed marriage and family therapist, or
5. a licensed professional counselor, or
6. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or
7. a person with a graduate degree in counseling, psychiatric nursing, marriage and family therapy, social work or psychology who is working toward a clinical license, and has been approved by the Division of Occupational and Professional Licensing for the appropriate supervision, or
8. a second year graduate student in training for one of the above degrees, or
9. a licensed social services worker with at least three years of continual, full time, related experience, when practicing under the direction and supervision of a licensed clinical professional.
10. Individuals from categories g.h. above shall not supervise clinical programs. Individuals in category i. above shall not supervise clinical programs, and may only co-facilitate group therapy sessions with a person qualified per paragraphs a. through f. above.

R501-21-6. Direct Service.

A. Treatment plans shall be developed based on assessment and evaluation of individual consumer needs. The treatment may be consultive and may include medication management.

B. Treatment plans shall be reviewed and signed by a licensed clinical professional as frequently as determined in the treatment plan.

C. Except for Domestic Violence, individual, group, couple, or family counseling sessions shall be provided to the consumer as frequently as determined in the treatment plan. In the consumer's record and in the progress notes, the date of the session and the provider shall be documented. Treatment sessions may be provided less frequently than once a month if approved by the clinical supervisor and justified in the consumer record.

D. Domestic violence treatment programs shall comply with generally accepted practices in the current domestic violence literature and the following requirements:

1. Maintain and document cooperative working relationships with domestic violence shelters, treatment programs, referring agencies, custodial parents when the consumer is a minor and local domestic violence coalitions. If the consumer is a perpetrator, contact with victims, current partner, and the criminal justice referring agencies is also required, as appropriate.
2. Treatment sessions for each perpetrator, not including orientation and assessment interviews, shall be provided for at least one hour per week for a minimum of sixteen weeks. Treatment sessions for children and victims shall offer a minimum of 10 sessions for each consumer not including intake or orientation.
3. Staff to Consumer Ratio:

a. The staff to consumer ratio in adult treatment groups shall be one to eight for a one hour long group or one to ten for an hour and a half long group. The maximum group size shall not exceed sixteen.

b. Child victim or child witness groups shall have a ratio of one staff to eight children when the consumers are under twelve years of age, and a one staff to ten children ratio when the consumers are twelve years of age or older.

c. When any consumer enters a treatment program the staff shall conduct an in-depth, face to face interview and assessment to determine the consumer's clinical profile and treatment needs. For perpetrator consumers, additional information shall be obtained from the police incident report, perpetrator's criminal history, prior treatment providers, and the victim. When appropriate, additional information for child consumers shall be

obtained from parents, prior treatment providers, schools and Child Protective Services. When any of the above information cannot be obtained the reason shall be documented. The assessment shall include the following:

1) a profile of the frequency, severity and duration of the domestic violence behavior, which includes a summary of psychological violence,

2) documentation of any homicidal, suicidal ideation and intentions as well as abusive behavior toward children,

3) a clinical diagnosis and a referral for evaluation to determine the need for medication if indicated,

4) documentation of safety planning when the consumer is an adult victim, child victim, or child witness, and that they have contact with the perpetrator. For victims who choose not to become treatment consumers, safety planning shall be addressed when they are contacted, and

5) documentation that appropriate measures have been taken to protect children from harm.

4. Consumers deemed appropriate for a domestic violence treatment program shall have an individualized treatment plan, which addresses all relevant treatment issues. Consumers who are not deemed appropriate for domestic violence programs shall be referred to the appropriate resource, with the reasons for referral documented and notification given to the referring agency. Domestic violence counseling shall be provided when appropriate, concurrently with or after other necessary treatment.

5. Conjoint or group therapy sessions with victims and perpetrators together or with both co-perpetrators shall not be provided until a comprehensive assessment has been completed to determine that the violence has stopped and that conjoint treatment is appropriate. The perpetrator must complete a minimum of 12 domestic violence treatment sessions prior to implementing conjoint therapy.

6. A written procedure shall be implemented to facilitate the following in an efficient and timely manner:

a. entry of the court ordered defendant into treatment,

b. notification of consumer compliance, participation or completion,

c. disposition of non-compliant consumers,

d. notification of the recurrence of violence, and

e. notification of factors which may exacerbate an individual's potential for violence.

7. Comply with the "Duty to Warn," Section 78-14a-102.

8. Document specialized training in domestic violence assessment and treatment practices including 24 hours of pre-service training within the last two years and 16 hours of training annually thereafter for all individuals providing treatment services.

9. Clinical supervision for treatment staff who are not clinically licensed shall consist of a minimum of an hour a week to discuss clinical dynamics of cases.

R501-21-7. Physical Environment.

A. The program shall provide written documentation of compliance with the following:

1. local zoning ordinances,
2. local business license requirements,
3. local building codes,
4. local fire safety regulations, and
5. local health codes.

B. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

R501-21-8. Physical Facility.

A. Space shall be provided for private and group counseling sessions.

B. The program shall have storage for the following:

1. locked storage for medications, and

2. locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

C. Equipment

1. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer plans.

2. All furniture and equipment shall be maintained in a clean and safe condition.

D. Bathrooms

1. Bathrooms shall accommodate physically disabled consumers.

2. Each bathroom shall be maintained in good operating order and be properly equipped with toilet paper, towels, and soap.

3. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

KEY: human services, licensing
May 2, 2000 62A-2-101 et seq.
Notice of Continuation April 22, 2005

R501. Human Services, Administration, Administrative Services, Licensing.
R501-22. Residential Support Programs.
R501-22-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office of Licensing, shall license residential support programs according to the following rules.

R501-22-2. Purpose.

Residential support programs arrange for or provide the necessities of life as a protective service to individuals or families who are experiencing a dislocation or emergency which prevents them from providing these services for themselves or their families. Treatment is not a necessary component of residential support, however treatment shall be made available on request.

R501-22-3. Definition.

Residential Support program means a 24-hour group living environment, providing room and board for four or more consumers unrelated to the owner or provider in accordance with Subsection 62A-2-101(14).

R501-22-4. Administration.

A. In addition to the following rules, all Residential Support Programs shall comply with R501-2, Core Standards.

B. The program shall ensure that consumers receive direct service from an assigned worker or other appropriate professional.

C. A list of current consumers shall be available and on-site at all times.

R501-22-5. Staffing.

A. The program shall have an employed manager responsible for the day to day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute to assume managerial responsibility as needed. With the exception of Domestic Violence Shelters, adult programs are not required to provide twenty four hour supervision.

B. The program shall make arrangement for medical backup with a medical clinic or physician licensed to practice medicine in the State of Utah.

C. During normal staff hours, the program shall have at least one person on duty who has completed and remains current in a certified first aid and CPR program.

D. Programs which utilize students and volunteers, shall provide screening, training, and evaluation of volunteers. Volunteers providing care in Domestic Violence Shelters, without paid staff present, shall have direct communication access to designated staff at all times. Volunteers shall be informed verbally and in writing of program objectives and scope of service.

R501-22-6. Direct Service.

This section supersedes core standards, Section R501-2-8.

A. The program consumer records shall contain the following:

1. name, address, telephone number, admission date, and personal information as required by the program,

2. emergency information with names, address, and telephone numbers,

3. a statement indicating that the resident meets the admission criteria,

4. description of presenting problems,

5. service plan and services provided, and referral arrangements as required by the program,

6. discharge date,

7. signature of person or persons, or designee providing services, and

8. crisis intervention and incident reports.

B. The program's consumer service plan shall offer and document as many life enhancement opportunities as are appropriate and reasonable.

C. Domestic Violence Shelter action plans shall include the following:

1. a review of danger and lethality with victim and discussion of the level of the victim's risk of safety.

2. a review of safety plan with the victim,

3. a review of the procedure for a protective order and referral to appropriate agency or clerk of the court authorized to issue the protective order, and

4. a review of supportive services to include, but not limited to medical, self sufficiency, day care, legal, financial, and housing assistance. The program shall facilitate connecting services to those resources as requested. Appropriate referrals shall be made, when indicated, and documented in the consumer record for victim treatment, psychiatric consultation, drug and alcohol treatment, or other allied services.

5. Domestic Violence Shelter staff completing action plans shall have at least a Bachelor's Degree in Behavioral Sciences.

R501-22-7. Physical Environment.

A. The program shall provide written documentation of compliance with the following:

1. local zoning ordinances,
2. local business license requirements,
3. local building codes,
4. local fire safety regulations,
5. local health codes, and
6. local approval from the appropriate government agency for new program services or increased consumer capacity.

B. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for its consumers and staff.

R501-22-8. Physical Facility.

A. Live-in staff shall have separate living space with a private bathroom.

B. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

C. Space shall be provided for private and group counseling sessions.

D. Bathrooms

1. There shall be separate bathrooms, including a toilet, lavatory, tub or shower, for males and females. These shall be maintained in good operating order and in a clean and safe condition.

2. Consumer to bathroom ratios shall be 10 to one.

3. Bathrooms shall accommodate consumers with physical disabilities, as required.

4. Each bathroom shall be maintained in good operating order and be equipped with toilet paper, towels, and soap.

5. There shall be mirrors secured to the walls at convenient heights.

6. Bathrooms shall be placed as to allow access without disturbing other residents during sleeping hours.

7. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

8. Domestic Violence Shelters Bathrooms

a. family members may share bathrooms, and

b. where bathrooms are shared by more than one family or by children over the age of eight, parents or program staff shall ensure that privacy is protected.

E. Sleeping Accommodations

1. A minimum of 60 square feet per consumer shall be provided in a multiple occupant bedroom and 80 square feet in a single occupant bedroom. Storage space shall not be counted.

2. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

3. Each bed, none of which shall be portable, shall be solidly constructed and be provided with clean linens after each consumer stay and at least weekly.

4. Sleeping quarters serving male and female residents shall be structurally separated.

5. Consumers shall be allowed to decorate and personalize bedrooms with respect for other residents and property.

6. For Domestic Violence Shelters, Family Support Centers and children's shelters, the following shall apply:

a. A minimum of 40 square feet per consumer shall be provided in a multiple occupant bedroom. Storage space shall not be counted. The use of one crib for children under two years of age shall not be counted in the square foot requirement as long as it does not inhibit access to and from the room.

b. Roll away and hide-a-beds may be used as long as the consumer square foot requirement is maintained.

c. Family members are allowed to share bedrooms. Where bedrooms are shared by more than one family, parents or program staff shall make appropriate arrangements to ensure privacy is protected.

F. Equipment

1. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs.

2. All furniture and equipment shall be maintained in a clean and safe condition.

G. Storage

1. The program shall have locked storage for medications.

2. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

3. Any weapons brought into the facility shall be secured in a locked storage area or removed from the premises.

H. Laundry Service

1. Programs which permit consumers to do their own laundry shall provide equipment and supplies for washing, drying, and ironing.

2. Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing.

3. Laundry appliances shall be maintained in good operating order and in a clean and safe condition.

R501-22-9. Food Service.

A. One staff shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

B. The staff responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumer's service record information relating to special nutritional needs and provide for nutritional counseling where indicated.

C. The program shall establish and post kitchen rules and privileges according to consumer needs.

D. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.

E. Meals may be prepared at the facility or catered.

F. Kitchens shall have clean, safe operational equipment for the preparation, storage, serving, and clean up of all meals.

G. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.

H. When meals are prepared by consumers, there shall be a written policy to include the following:

1. rules of kitchen privileges,
2. menu planning and procedures,
3. nutritional and sanitation requirements, and
4. schedule of responsibilities.

R501-22-10. Specialized Services for Substance Abuse.

A. The program shall not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma or unconscious.

B. Before admission, consumers shall be tested for Tuberculosis. Both consumers and staff shall be tested annually or as directed by the local health requirements.

R501-22-11. Specialized Services for Programs Serving Children.

A. The program shall provide clean and safe age appropriate toys for children.

B. The program shall provide an outdoor play area enclosed with a five foot safety fence.

C. Only custodial parents, legal guardian, or persons designated in writing, are allowed to remove any child from the program.

D. The program shall provide adequate staff to supervise children at all times.

R501-22-12. Specialized Services for Domestic Violence Shelters.

A. The program shall provide clean and safe age appropriate toys for children.

B. The program shall provide an outdoor play area enclosed with a five foot safety fence.

C. The program shall provide and document the following information both verbally and in writing to the consumer: Shelter rules, reason for termination, and confidentiality issues.

D. Parents are responsible for supervising their children while at the shelter. If parents are required to be away from the shelter or involved in shelter activities without their children, they shall arrange for appropriate child care services.

KEY: human services, licensing
May 2, 2000 62A-2-101 et seq.
Notice of Continuation April 22, 2005

R539. Human Services, Services for People with Disabilities.
R539-2. Service Coordination.
R539-2-1. Purpose.

(1) The purpose of this rule is to provide standards for the Division service system, including planning, developing and managing an array of services for Persons with disabilities and their families throughout the state as required by Subsection 62A-5-103(1).

R539-2-2. Authority.

(1) This rule establishes standards as required by Subsection 62A-5-103(1).

R539-2-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Quality Assurance" means the Family, Provider, and Division management's role to assure accountability in areas of fiscal operations, health, safety, and contract compliance.

(b) "Quality Improvement" means the Provider's role to evaluate and improve the internal delivery of services.

(c) "Quality Enhancement" means the Division and the Team members' role in supporting a Person to experience personal life satisfaction in accordance with the Person's preferences.

R539-2-4. Waiting List.

(1) Pursuant to Subsection 62A-5-102(3), the Division shall determine a Person's eligibility for service, followed by a determination of that Person's priority relative to others who are also eligible. Each region shall use a standardized Needs Assessment to score and prioritize the Person's level of need. Persons with the highest scores shall receive support first. The Support Coordinator shall assess with the Person the array of services that may be needed. If funding is not immediately available, the Person shall be placed on a waiting list for support. Persons who have been determined eligible for the Division's Medicaid Waivers can choose to wait for Division Support services or seek services available through Medicaid in an approved facility.

(2) If the Person requires, and could use, support services on the day of intake, the Person has an immediate need; otherwise, the Person has a future need.

(3) A Needs Assessment Form 2-2 shall be completed for all Persons with an immediate need for support services. The Needs Assessment calculates the score of each Person by using the following criteria:

(a) severity of the disabling condition;
(b) needs of the Person and/or family;
(c) length of time on the waiting list, if applicable;
(d) appropriate alternatives available; and
(e) other factors determined by the Region to reflect accurately on the Person's need:
(i) family composition;
(ii) skills and stress of primary caregiver;
(iii) finances and insurances;
(iv) ability to be self-directing;
(v) special medical needs;
(vi) problem behaviors;
(vii) protective service issues;
(viii) resources/supports needed;
(ix) projected deterioration issues; and
(x) time on immediate need waiting list.

(4) The Region Needs Assessment Committee determines the Person's score, rank orders the scores, and enters the Person's name and score on the statewide waiting list.

(5) A Person's ranking may change if the Person's needs change or as Needs Assessments are completed for new Applicants.

(6) No age limitations apply to a Person placed on the waiting list for community living support or family support.

R539-2-5. Person-Centered Process.

(1) The Division supports Person-Centered Planning, which includes assessing, planning, implementing, and evaluating. This process shall have an individualized focus and incorporate the principles of Person-Centered Planning, self-determination, informed choice, and equity. Input from the Person and the Person's Team should guide and direct this process.

(a) The Person's Team shall work with the Person to identify goals.

(i) The Person receiving supports determines the membership of the Team, which shall include the Support Coordinator.

(ii) The Team meets at least annually within the month in which the previous meeting occurred, or more often as the Person or other members of the Team determine necessary.

(b) The Person, Provider, and Family shall assess, plan, implement, and evaluate goals and supports for which they are responsible, as agreed upon and listed on Division Form 1-16 in the planning meeting.

(c) The Team shall decide the level of detail required to describe the actions involved in the assessing, planning, implementing, and evaluating needs for the supports based on the experience and expertise of the staff providing the Person's supports. The use of the philosophical Person-Centered Planning approach shall be demonstrated and documented in the Person's file.

(d) Any interested party who believes that Person-Centered Planning is not being implemented as outlined or receives a request from the Person, should contact the Support Coordinator immediately to resolve the issue informally, and, if necessary, through the administrative hearing process outlined in R539-3-8 Notice of Agency Action and Administrative Hearings.

R539-2-6. Entry Into and Movement Within Service System.

(1) The Division shall assure that an appropriate choice of supports and Providers exist for Persons entering or moving within the support system in accordance with Subsections 62A-5-103(1) and 62A-5-103(12). The Division shall coordinate, approve, and oversee all out-of-home placements.

(2) Entry into Division-funded supports:

(a) Once a Person's application for waiver services is processed by the Division, the Person is referred to the local financial eligibility office.

(b) Prior to the provision of community living supports, a Person may be required to complete a medical examination and, if under the age of 18, provide a current immunization record.

(c) Admission to Division programs from a nursing facility will be coordinated by the Region office with the Person, the nursing facility social worker, the Support Coordinator, and the prospective Provider.

(d) The Division shall provide Persons with a choice of Providers by:

(i) sending Providers notice and invitation to submit offers to provide services via use of Division Form 1-6; and

(ii) assisting the Person to make an informed choice of Provider.

(e) Interested Providers may schedule and coordinate a service entry meeting that involves the Person, the Representative, Support Coordinator, and invited guests, (i.e., Developmental Center staff, school representative, and Division staff). The meeting should be held at the prospective site of placement whenever possible.

(f) The Provider shall submit an acceptance or denial letter

within ten business days of the service entry meeting to the Support Coordinator and the Person. An acceptance letter shall include a written description of the following:

(i) services to be provided;

(ii) location of the service;

(iii) name and address of the primary care physician, or other medical specialists, including, for example, neurologist or dentist;

(iv) a training and in-service schedule for the staff to meet with the Person;

(v) proposed date services will begin; and

(vi) agreed upon rate and level of support.

(g) The physical move of the Person shall be the responsibility of the Provider who is accepting the Person.

(h) The Division shall send the Person's information to the Provider five business days prior to the move.

(3) Any Team Member may initiate a request to change Provider or Developmental Center residence by asking the Support Coordinator to arrange a meeting.

(4) If a Person requests a change of Provider, the Support Coordinator shall arrange a discharge meeting that provides a ten-business-day written notice to the Person, present Provider, Support Coordinator, and receiving Provider.

(a) The present Provider may request the opportunity to make changes in the existing relationship to address the concerns that initiated the discharge meeting.

(b) The Region Director shall make the final decision concerning the discharge if the parties cannot come to agreement.

(5) A Provider initiated request for discharge of a Person shall require 90 calendar days prior notification to the Person and the Division.

(6) Emergency Services Management Committee (ESMC):

(a) An Emergency Services Management Committee chairperson shall be appointed by the Division Director. Membership shall include:

(i) Division Specialists;

(ii) a representative from each Region who is skilled in crisis intervention and knowledgeable of local resources;

(iii) a representative from the Developmental Center; and

(iv) others as appointed by the Division Director.

(b) The Emergency Services Management Committee shall ensure that Persons are placed in the least restrictive most appropriate living situation as per Sections 62A-5-302 through 62A-5-312 and Subsection 62A-5-402(2)(a). Exceptions to the statute requiring children under age 11 to live only in family-like environments, as per Section 62A-5-403, require Emergency Services Management Committee review and recommendation to the Division Director for final written approval.

R539-2-7. Quality Management Procedures.

(1) The Division will oversee the three distinct functional roles of quality management, which are Quality Assurance, Quality Improvement, and Quality Enhancement.

(a) Necessary quality assurances are specified by contract with the Division. The Division may work with other offices and bureaus of the Department of Human Services and the Department of Health to assure quality.

(b) Providers are responsible to develop and implement an internal quality management system, which shall:

(i) Evaluate the Provider's programs; and

(ii) Establish a system of self-correcting feedback.

(c) The implementation of the Person's Action Plan shall be designed to enhance the Person's life. The Person and Person's Team shall:

(i) Identify and document the Person's preferences;

(ii) Plan how to support the Person's life satisfaction; and

(iii) Implement the plan with supports from the Division, such as;

(A) Technical Assistance, which involves training, mentoring, consultation, and referral through Division staff.

(B) Quality Enhancement Resource Brokerage, which involves identification and compilation of community resources, including other consumers and families, and referral to and prior approval of payment for these supports.

(C) Consumer empowerment, which involves rights education, leadership training.

(D) Team and System Process Enhancement, which involves facilitation and negotiation training, community education, and consumer satisfaction surveys.

(2) The Division shall evaluate the Person's satisfaction and statistical statewide system indicators of life enhancement.

(3) Division staff shall promote enhancement of the Person's life; support improvement efforts undertaken by Providers, Persons, and families; and assure accountability.

R539-2-8. Request for New Support Coordinator.

(1) A Person may request a new Support Coordinator by submitting a written request to the Region Office Supervisor.

KEY: services, people with disabilities
March 12, 2005 **62A-5-102**
62A-5-103

R590. Insurance, Administration.
R590-148. Long-Term Care Insurance Rule.
R590-148-1. Authority.

This rule is issued pursuant to the authority vested in the commissioner under Sections 31A-2-201 and 31A-22-1404.

R590-148-2. Purpose.

The purpose of this rule is to implement standards for full and fair disclosure of the manner, content, and required disclosures for long-term care insurance to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

R590-148-3. Applicability and Scope.

Except as otherwise specifically provided, this rule applies to all long-term care insurance, as defined in 31A-1-301, delivered or issued for delivery in this state on or after January 1, 1993, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations. Additionally, this rule is intended to apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance, if:

(1) The benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;

(2) The disability income policy is advertised, marketed or offered as insurance for long-term care services; or

(3) Benefits under the policy may commence after the policyholder has reached Social Security's normal retirement age unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

R590-148-4. Incorporation by Reference.

The following tables and appendices are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours or at http://www.insurance.utah.gov/ruleindex.html. These tables and appendices were adopted by the National Association of Insurance Commissioners' Long-Term Care Insurance Model Regulation #641, as approved April 2000.

(1) Table I, Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance.

(2) Table II, Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance.

(3) Table III, Triggers for a Substantial Premium Increase.

(4) Table IV, Long-Term Care Insurance Outline of Coverage.

(5) Appendix A, Rescission Reporting Form.

(6) Appendix B, Personal Worksheet: Long-Term Care Insurance Personal Worksheet.

(7) Appendix C, Disclosure Form: Things You Should Know Before You Buy Long-Term Care Insurance.

(8) Appendix D, Response Letter: Long-Term Care Insurance Suitability Letter.

(9)Appendix E, Claims Denial Reporting Form Long-Term Care Insurance.

(10) Appendix F, Worksheet Potential Rate Increase Disclosure Form.

R590-148-5. Definitions.

(1) For the purpose of this rule, the terms "applicant," "long-term care insurance," "certificate," "commissioner," and "policy" shall have the meanings set forth in Sections 31A-1-301 and 31A-22-1402.

(2) In addition, the following definitions apply:

(a) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

(b) "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain the individual's health status.

(c) "Adult day care" means a program for three or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or disabled adults who can benefit from care in a group setting outside the home.

(d) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(e) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

(f) "Continence" means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.

(g)(i) "Chronically ill individual" has the meaning prescribed for this term by section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

(A) Being unable to perform, without substantial assistance from another individual, at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or

(B) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(ii) The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding 12-month period a licensed health care practitioner has certified that the individual meets these requirements.

(h) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

(i) "Eating" means feeding oneself by getting food into the body from a receptacle, such as a plate, cup or table, or by a feeding tube or intravenously.

(j)(i) "Exceptional increase" means only those increases filed by an insurer as exceptional for which the Commissioner determines the need for the premium rate increase is justified:

(A) due to changes in laws and rules applicable to long-term care coverage in this state; or

(B) due to increased and unexpected utilization that affects the majority of insurers of similar products.

(ii) Except as provided in Section R590-148-24, exceptional increases are subject to the same requirements as other premium rate schedule increases.

(iii) The commissioner may request review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

(iv) The commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

(k) "Hands-on assistance" means physical assistance, minimal, moderate or maximal, without which the individual would not be able to perform the activity of daily living.

(l) "Home health care services" means medical and

nonmedical services, provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

(m) "Incidental" means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

(n) "Licensed health care practitioner" means a physician, as defined in Section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the Secretary of the Treasury.

(o) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual, including the protection from threats to health and safety due to severe cognitive impairment.

(p) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(q) "Mental or nervous disorder" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(r) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living, for example bathing, eating, dressing, transferring and toileting.

(s) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(t) "Qualified long-term care services" means services that meet the requirements of Section 7702(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(u) "Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows:

(i) institutional long-term care benefits only;

(ii) non-institutional long-term care benefits only; or

(iii) comprehensive long-term care benefits.

(v) "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

(w) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(x) "Transferring" means moving into or out of a bed, chair or wheelchair.

(3) All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

R590-148-6. Required Provisions and Practices.

(1) Renewability.

The terms "guaranteed renewable" and "noncancellable" may not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Subsection R590-148-6(1)(b).

(a) No policy issued to an individual may contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(i) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(ii) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(b) Individual long-term care insurance policies shall contain a renewability provision. This provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision may not apply to policies which do not contain a renewability provision, and under which the right to non-renew is reserved solely to the policyholder.

(c) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.

(2) Limitations and Exclusions.

(a) No policy may be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(i) preexisting conditions or diseases;

(ii) mental or nervous disorders; however, this may not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease, or any other mental or nervous disorder of organic origin;

(iii) alcoholism and drug addiction;

(iv) illness, treatment or medical condition arising out of:

(A) war or act of war, whether declared or undeclared;

(B) participation in a felony, riot or insurrection;

(C) service in the armed forces or auxiliary units;

(D) suicide, sane or insane, attempted suicide or intentionally self-inflicted injury; or

(E) aviation for non-fare-paying passengers;

(v) treatment provided in a government facility, unless otherwise required by law,

(vi) services for which benefits are paid under:

(A) Medicare or other governmental program, except Medicaid;

(B) any state or federal workers' compensation;

(C) employer's liability or occupational disease law; or

(D) any motor vehicle no-fault law;

(vii) services provided by a member of the covered person's immediate family;

(viii) services for which no charge is normally made in the absence of insurance;

(ix) benefits provided for a level of care cannot be conditioned on a requirement that the care be in a facility licensed for higher levels of care.

(b) Subsection R590-148-6(2)(a) is not intended to prohibit exclusions and limitations by type of provider or territorial

limitations outside the United States.

(3) Preexisting Condition Limitation. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(4) Benefit Triggers. Activities of daily living and cognitive impairment may be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this paragraph. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

(5) Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(6) Discontinuance and Replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(a) may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(b) may not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

(7) Premiums.

(a) The term "level premium" may only be used when the insurer does not have the right to change the premium.

(b) A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(c) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under Section R590-148-14, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(d) A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under Section R590-148-14, the initial annual premium shall be based on the reduced benefits.

(8) Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, this premium charge shall be set forth in the policy, rider or endorsement.

(9) Payment of Benefits. A long-term care insurance policy or certificate that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

(10) Eligibility for Benefits Limitations and Conditions. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in Section 31A-22-1407 shall set forth a description of these limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

(11) Disclosure of Tax Consequences. With regard to life insurance policies which provide for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the benefit payment request is submitted that receipt of these benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This subsection shall not apply to qualified long-term care insurance contracts.

(12) Qualified Contracts. A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(13) Nonqualified Contracts. A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage that the policy is not intended to be a qualified long-term care insurance contract.

(14) Long-term care insurance sold in conjunction with another insurance product, including but not limited to life insurance or annuities shall be in the form of a separate rider complying with all provisions of this Rule. Long-term care insurance shall not be incorporated into a life insurance policy or annuity contract.

R590-148-7. Minimum Standards for Home Health and Community Care Benefits in Long-Term Care Insurance Policies.

(1) A long-term care insurance policy or certificate shall not, if it provides benefits for home health care services, limit or exclude benefits:

(a) by requiring that the insured would need care in a skilled nursing facility if home health care services were not provided;

(b) by requiring that the insured first or simultaneously receive nursing or therapeutic services, or both, in a home, community or institutional setting before home health care services are covered;

(c) by limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of the aid or worker's licensure or certification;

(e) by excluding coverage for personal care services provided by a home health aide;

(f) by requiring that the provision of home health care services be at a level of certification or licensure greater than that required for the eligible service;

(g) by requiring that the insured have an acute condition before home health care services are covered;

(h) by limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) by excluding coverage for adult day care services.

(2) Home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

(3) A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement may not apply to policies or certificates issued to residents of continuing care retirement communities.

R590-148-8. Standards for Benefit Triggers.

(1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than 3 of the activities of daily living or the presence of cognitive impairment.

(2) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Subsection R590-148-5(2)(a) as long as they are defined in the policy.

(3) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in Subsections R590-148-8(1) and (2).

(4) For purposes of this section the determination of a deficiency shall not be more restrictive than:

(a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cuing by another person is needed in order to protect the insured or others.

(5) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

(6) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

(7) The requirements set forth in this section shall be effective July 1, 2002 and shall apply as follows:

(a) Except as provided in Subsection R590-148-8(7)(b), the provisions of this section apply to a long-term care policy issued in this state on or after January 1, 2002.

(b) For certificates issued on or after January 1, 2002, under a group long-term care insurance policy that was in force at the time this rule became effective, the provisions of this section shall not apply.

R590-148-9. Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts.

(1) A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(2) A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

(3) Certifications regarding activities of daily living and cognitive impairment required pursuant to Subsection R590-148-9(2) shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury.

(4) Certifications required pursuant to Subsection R590-148-9(2) may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the 90-day period.

(5) Qualified long-term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

R590-148-10. Continuation and Conversion.

(1) Group long-term care insurance issued in this state on or after January 1, 2002 shall provide covered individuals with a basis for continuation or conversion of coverage.

(2) For the purposes of this section:

(a) "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers, facilities, or both, may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(b) "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy, and any group policy which it replaced, for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.

(c) "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers, facilities, or both, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels and administrative complexity.

(d) a "Managed-Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

(3) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 60 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable

annually.

(4) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(5) The premium for the individual converted policy shall not exceed the insurer's customary rate at the time of the termination, which is applicable to the form and amount of the individual policy, and to the class of risk to which the person belonged when terminated from the group policy.

(6) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(a) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(b) the terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(i) providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) the premium for which is calculated in a manner consistent with the requirements of Subsection R590-148-10(4).

(7) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. This provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(8) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, may not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(9) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

R590-148-11. Unintentional Lapse and Reinstatement.

Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(b) The insurer shall notify the insured of the right to change this written designation, no less often than once every two years.

(c) When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan the requirements contained in Subsection R590-148-11(1)(a) need not be met until 60 days after the policyholder or certificateholder is no longer on a payroll or pension deduction plan.

(d) Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection R590-148-11(1)(a), at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until 30 days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

(2) Reinstatement. In addition to the requirement in Subsection R590-148-11(1)(a), a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

R590-148-12. Applications, Enrollment and Replacement of Coverage.

(1) All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.

(3) All applications shall clearly indicate the payment plan selected by the applicant.

(4) Except for policies or certificates which are guaranteed issue:

(a) the following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or

certificate:

Caution: If your answers on this application are incorrect or untrue, (company) has the right to deny benefits or rescind your policy.

(b) the following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance (policy) (certificate) was based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)

(5) Prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:

(a) a report of a physical examination;

(b) an assessment of functional capacity;

(c) an attending physician's statement; or

(d) copies of medical records.

(6) A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(7) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing these questions may be used. With regard to a replacement policy issued to a group, other than employee and labor union groups, the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificateholder has been notified of the replacement.

(a) Do you have another long-term care insurance policy or certificate in force, including health care service contract, health maintenance organization contract?

(b) Did you have another long-term care insurance policy or certificate in force during the last 12 months?

(i) If so, with which company?

(ii) If that policy lapsed, when did it lapse?

(c) Are you covered by Medicaid?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy/certificate?

(8) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.

(b) List policies sold in the past five years which are no longer in force.

(9) Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of this notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the manner detailed in Table I, Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance.

(10) Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the manner detailed in Table II, Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance.

(11) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. The notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(12) Life insurance policies and certificates that provide benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of R590-93, Replacement of Life Insurance and Annuities. If a life insurance policy that provide benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

(13) Electronic Enrollment for Group Policies:

(a) In the case of a group policy, any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:

(i) the consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

(ii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

(iii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the confidentiality of individually identifiable information and "privileged information" as defined by the Utah Government Records Access and Management Act, Section 63-2-101, is maintained.

(b) The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

R590-148-13. Requirement to Offer Inflation Protection.

(1) No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(a) increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than 5%;

(b) guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The premium rate for the additional benefit shall not exceed the insurer's customary rate at the time the offer is made, which is applicable to the form and amount of the policy, the class of risk to which the person belonged at the time of issue of the policy, and to the age attained on the effective date of the increase. The amount of the additional benefit may be no less than the difference between the existing policy benefit and that benefit compounded

annually at a rate of at least 5% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the policy is issued to a group, except a continuing care retirement community center, the required offer in Subsection R590-148-13(1) shall be made to the group policyholder and to each proposed certificateholder.

(3) Insurers shall include the following information in or with the outline of coverage:

(a) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20 year period; and

(b) any expected premium increases or additional premiums to pay for automatic or optional benefit increases. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(4) Inflation protection benefit increases under a policy which contains this benefit shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(5) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(6)(a) Inflation protection as provided in Subsection R590-148-13(1)(a) shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection. The rejection may be either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans (indicate), and I reject inflation protection.

R590-148-14. Nonforfeiture and Contingent Benefit Requirements.

(1) To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of Section 31A-22-1412:

(a) a policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in Subsection R590-148-14(4); and

(b) the offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

(2) If the offer required to be made under Section 31A-22-1412 is rejected, the insurer shall provide the contingent benefit upon lapse described in this section.

(3)(a) After rejection of the offer required under Section 31A-22-1412, for individual and group policies without nonforfeiture benefits issued after January 1, 2002, the insurer shall provide a contingent benefit upon lapse.

(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in Table III, Triggers for a Substantial Premium Increase, based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase.

(d) On or before the effective date of a substantial premium increase as defined in Subsection R590-148-14(3)(c), the insurer shall:

(i) offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(ii) offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection R590-148-14(4). This option may be elected at any time during the 120-day period referenced in Subsection R590-148-14(3)(c); and

(iii) notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in Subsection R590-148-14(3)(c) shall be deemed to be the election of the offer to convert in Subsection R590-148-14(3)(d)(ii).

(4) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in this subsection:

(a) For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases with age at least 1% per year prior to age 50, and at least 3% per year beyond age 50.

(b) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits, amounts and frequency in effect at the time of lapse but not increased thereafter, will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Subsection R590-148-14(4)(c).

(c) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection R590-148-14(5).

(d)(i) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

(ii) Notwithstanding Subsection R590-148-14(4)(d)(i), for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(A) the end of the tenth year following the policy or certificate issue date; or

(B) the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(e) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(5) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would payable if the policy or certificate had remained in premium paying status.

(6) There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

(7) The requirements set forth in this section shall become

effective July 1, 2002 and shall apply as follows:

(a) Except as provided in Subsection R590-148-14(7)(b), the provisions of this section apply to any long-term care policy issued in this state on or after January 1, 2002.

(b) For certificates issued on or after January 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall not apply.

(8) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section R590-148-21 treating the policy as a whole.

(9) To determine whether contingent nonforfeiture upon lapse provisions are triggered under Subsection R590-148-14(3)(c), a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(10) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

(a) the nonforfeiture provision shall be appropriately captioned;

(b) the nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and

(c) the nonforfeiture provision shall provide at least one of the following:

(i) reduced paid-up insurance;

(ii) extended term insurance;

(iii) shortened benefit period; or

(iv) other similar offerings approved by the commissioner.

R590-148-15. Standard Format Outline of Coverage.

This section of the rule implements, interprets and prescribes a standard format of an outline of coverage for the provisions in Subsection 31A-22-1409(2).

(1) The outline of coverage shall be a free-standing document, using no smaller than ten point type.

(2) The outline of coverage may contain no material of an advertising nature.

(3) Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to capitalization or underscoring.

(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(5) The format for outline of coverage can be found in Table IV, Long-Term Care Insurance Outline of Coverage.

R590-148-16. Requirement to Deliver Shopper's Guide.

(1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

(a) In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.

(b) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

(2) Life insurance policies or riders that provide long-term care benefits are not required to furnish the above-referenced guide if the long term care benefits are incidental, but shall furnish the policy summary required under Subsection 31A-22-1409(8).

R590-148-17. Filing Requirements.

(1) Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state pursuant to Section 31A-22-1403, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

(2)(a) Every insurer shall provide a copy of any long-term care insurance advertisement intended for use in Utah whether through written, radio or television medium to the insurance commissioner of this state.

(b) All advertisements shall be retained by the insurer, health care service plan or other entity for at least three years from the date the advertisement was first used.

(c) The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.

R590-148-18. Suitability.

(1) Every insurer shall:

(a) develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) train its agents in the use of its suitability standards; and

(c) maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.

(2)(a) To determine whether the applicant meets the standards developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:

(i) the ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(ii) the applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(iii) the values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(b) The insurer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in Subsection R590-148-18(2)(a). The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the insurer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than 12 point type. The insurer may request the applicant to provide additional information to comply with its suitability standards. A copy of the insurer's personal worksheet shall be filed with the commissioner.

(c) A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(d) The sale or dissemination outside the company or agency by the insurer or agent of information obtained through the personal worksheet in Appendix B is prohibited.

(3) The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(4) Agents shall use the suitability standards developed by the insurer in marketing long-term care insurance.

(5) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Appendix C in not less than 12 point type.

(6) If the insurer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the insurer may reject the application. In the alternative, the insurer shall send the applicant a letter similar to Appendix D, Long-Term Care Insurance Suitability Letter. However, if the applicant has declined to provide financial information, the insurer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

(7) If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

R590-148-19. Marketing Standards.

(1) Every insurer shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(d) Provide copies of the disclosure forms required in Subsection R590-148-20(2) to the applicant. See Appendix B, Long-Term Care Insurance Personal Worksheet, and Appendix F, Potential Rate Increase Disclosure Form.

(e) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of this insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required.

(f) Every insurer or entity marketing long-term care insurance shall establish audit able procedures for verifying compliance with this Subsection R590-148-19(1).

(g) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that the program is available and the name, address and telephone number of the program.

(h) For long-term care health insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to Subsections R590-148-6(1)(a)(ii) and R590-148-6(6)(a).

(i) Provide an explanation of contingent benefit upon lapse provided for in Subsection R590-148-14(3)(c).

(2) In addition to the practices prohibited in Part 3, Chapter 23 of Title 31A, the following acts and practices are prohibited:

(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(d) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

R590-148-20. Required Disclosure of Rating Practices to Consumer.

(1) This section shall apply as follows:

(a) Except as provided in Subsection R590-148-20(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2002.

(b) For certificates issued on or after January 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following July 1, 2002.

(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.

(a) A statement that the policy may be subject to rate increases in the future;

(b) an explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

(c) the premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(d) a general explanation for applying premium rate or rate schedule adjustments that shall include:

(i) a description of when premium rate or rate schedule adjustments will be effective, e.g., next anniversary date, next billing date, etc.; and

(ii) the right to a revised premium rate or rate schedule as provided in Subsection R590-148-20(2)(b) if the premium rate or rate schedule is changed.

(e)(i) Information regarding each premium rate increase on this policy form or similar policy forms over the past ten years for this state or any other state that, at a minimum, identifies:

(A) the policy forms for which premium rates have been increased;

(B) the calendar years when the form was available for purchase; and

(C) the amount, percent, and date of implementation for each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(ii) The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

(iii) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers

when those increases occurred prior to the acquisition.

(iv) If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of January 1, 2002, or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with Subsection R590-148-20(2)(e)(i).

(v) If the acquiring insurer in Subsection R590-148-20(2)(e)(iv) files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in Subsection R590-148-20(2)(e)(iv), the acquiring insurer shall make all disclosures required by Subsection R590-148-20(2)(e), including disclosure of the earlier rate increase referenced in Subsection R590-148-20(2)(e)(iv).

(3) An applicant shall sign an acknowledgment at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under Subsections R590-148-20(2)(a) and (e). If due to the method of application the applicant cannot sign an acknowledgment at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

(4) An insurer shall use the forms in Appendix B, Personal Worksheet, and Appendix F, Potential Rate Increase Disclosure Form, to comply with the requirements of Subsections R590-148-20(1) and (2).

(5) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by Subsection R590-148-20(2) when the rate increase is implemented.

R590-148-21. Loss Ratio.

(1) This section shall apply to all individual long-term care insurance except those covered in Sections R590-148-22 and R590-148-24.

(2) Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least 60%, calculated in a manner which provides for adequate reserving of the long-term care insurance risk.

(3) In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

(a) statistical credibility of incurred claims experience and earned premiums;

(b) the period for which rates are computed to provide coverage;

(c) experienced and projected trends;

(d) concentration of experience within early policy duration;

(e) expected claim fluctuation;

(f) experience refunds, adjustments or dividends;

(g) renewability features;

(h) all appropriate expense factors;

(i) interest;

(j) experimental nature of the coverage;

(k) policy reserves;

(l) mix of business by risk classification; and

(m) product features such as long elimination periods, high deductibles and high maximum limits.

(4) The premiums charged to an insured for long-term care insurance may not increase due to either:

(a) the increasing age of the insured at ages beyond 65; or

(b) the duration the insured has been covered under the policy.

R590-148-22. Premium Rate Schedule Increases.

(1) This section shall apply as follows:

(a) except as provided in Subsection R590-148-22(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2002,

(b) for certificates issued on or after January 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following July 1, 2002.

(2) An insurer shall file the information listed in this subsection to the commissioner prior to making a long-term care insurance form available for sale:

(a) a copy of the disclosure documents required in Section R590-148-20; and

(b) an actuarial certification consisting of at least the following:

(i) a statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(ii) a statement that the policy design and coverage provided have been reviewed and taken into consideration;

(iii) a statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

(iv) a complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

(A) sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(B) a statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(C) a statement that the net valuation premium for renewal years does not increase, except for attained-age rating where permitted; and

(D) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;

(I) an aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship; and

(II) if the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under Subsection R590-148-22(3) based on a standard age distribution;

(v)(A) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

(B) A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(3) The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

(4) The premiums charged to an insured for long-term care insurance may not increase due to either:

(a) the increasing age of the insured at ages beyond 65; or

(b) the duration the insured has been covered under the policy.

R590-148-23. Reserve Standards.

(1) When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with Subsection 31A-17-504(7). Claim reserves must also be established when the policy or rider is in claim status.

Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event may the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

(a) definition of insured events;
(b) covered long-term care facilities;
(c) existence of home convalescence care coverage;
(d) definition of facilities;
(e) existence or absence of barriers to eligibility;
(f) premium waiver provision;
(g) renewability;
(h) ability to raise premiums;
(i) marketing method;
(j) underwriting procedures;
(k) claims adjustment procedures;
(l) waiting period;
(m) maximum benefit
(n) availability of eligible facilities;
(o) margins in claim costs;
(p) optional nature of benefit;
(q) delay in eligibility for benefit;
(r) inflation protection provisions; and
(s) guaranteed insurability option.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) When long-term care benefits are provided other than as in Subsection R590-148-23(1), reserves shall be determined in accordance with 31A-17-402(2)(b).

R590-148-24. Premium Rate Schedule Increases.

(1) This section shall apply as follows:

(a) except as provided in Subsection R590-148-24(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2002.

(b) for certificates issued on or after January 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following July 1, 2002.

(2) An insurer shall file notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner prior to the notice to the policyholders and shall include:

(a) information required by Section R590-148-20;

(b) certification by a qualified actuary that:

(i) if the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;

(ii) the premium rate filing is in compliance with the provisions of this section;

(c) an actuarial memorandum justifying the rate schedule change request that includes:

(i) lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale:

(A) annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(B) the projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(C) the projections shall demonstrate compliance with Subsection R590-148-24(3); and

(D) for exceptional increases:

(I) the projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(II) in the event the commissioner determines as provided in Section R590-148-5(2)(j)(iv) that offsets may exist, the insurer shall use appropriate net projected experience;

(ii) disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(iii) disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

(iv) a statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

(v) in the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;

(d) a statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(e) sufficient information for review of the premium rate schedule increase by the commissioner.

(3) All premium rate schedule increases shall be determined in accordance with the following requirements:

(a) exceptional increases shall provide that at least 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(i) the accumulated value of the initial earned premium times 58%;

(ii) 85% percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(iii) the present value of future projected initial earned premiums times 58%; and

(iv) 85% percent of the present value of future projected premiums not in Subsection R590-148-24(3)(b)(iii) on an earned basis;

(c) in the event that a policy form has both exceptional and

other increases, the values in Subsections R590-148-24(3)(b)(ii) and (iv) will also include 70% for exceptional rate increase amounts; and

(d) all present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves which is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the health insurance contract.

(4) For each rate increase that is implemented, the insurer shall file for review by the commissioner updated projections, as defined in Subsection R590-148-24(2)(c)(i), annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in Subsection R590-148-24(11), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(5) If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, lifetime projections, as defined in Subsection R590-148-24(2)(c)(i), shall be filed for review by the commissioner every five years following the end of the required period in Subsection R590-148-24(4). For group insurance policies that meet the conditions in Subsection R590-148-24(11), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(6)(a) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in Subsection R590-148-24(3), the commissioner may require the insurer to implement any of the following:

(i) premium rate schedule adjustments; or

(ii) other measures to reduce the difference between the projected and actual experience.

(b) In determining whether the actual experience adequately matches the projected experience, consideration should be given to Subsection R590-148-24(2)(c)(v), if applicable.

(7) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(a) a plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in Subsection R590-148-24(8); and

(b) the original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to Subsection R590-148-24(3) had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in Subsection R590-148-24(3)(a)(i) and (iii).

(8) (a) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

(i) the rate increase is not the first rate increase requested for the specific policy form or forms;

(ii) the rate increase is not an exceptional increase; and

(iii) the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

(i) The offer shall:

(A) be subject to the approval of the commissioner;

(B) be based on actuarially sound principles, but not be based on attained age; and

(C) provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

(ii) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(A) the maximum rate increase determined based on the combined experience; and

(B) the maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10%.

(9) If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of Subsection R590-148-20.(8), prohibit the insurer from either of the following:

(a) filing and marketing comparable coverage for a period of up to five years; or

(b) offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(10) Subsections R590-148-24(1) through (9) shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in Subsection R590-148-5(2)(m), if the policy complies with all of the following provisions:

(a) the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) the portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

(i) Section 31A-22-408; and

(ii) Section 31A-22-409;

(c) the policy meets the disclosure requirements of Subsections 31A-22-1409(7) and (8) and 31A-22-1410;

(d) the portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

(i) policy illustrations as required by R590-177; and

(ii) disclosure requirements in R590-133;

(e) an actuarial memorandum is filed with the insurance department that includes:

(i) a description of the basis on which the long-term care rates were determined;

(ii) a description of the basis for the reserves;

(iii) a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) a description and a table of each actuarial assumption

used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(v) a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) the estimated average annual premium per policy and the average issue age;

(vii) a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(viii) a description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(11) Subsections R590-148-24(6) and (8) shall not apply to group insurance policies where:

(a) the policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) the policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

R590-148-25. Reporting Requirements.

(1) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(a) Every insurer shall report the 10% of its agents with the greatest percentages of lapses and replacements as measured by Subsection R590-148-25(1).

(b) Every insurer shall report the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(c) Every insurer shall report the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(d) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(2) Every insurer shall report, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied. The report used by the insurer shall contain, at a minimum, the information in the format contained in Appendix E, Claims Denial Reporting Form Long-Term Care Insurance, in not less than 12 point type.

(3) Every insurer shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually report this information in the format currently prescribed by the National Association of Insurance Commissioners.

(4) Every insurer shall report the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

(5) For purposes of this section:

(a) "policy" shall mean only long-term care insurance;

(b) "claim" means a request for payment of benefits under an in force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

(c) "denied" means that the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

(d) "report" means on a statewide basis.

(6) Reports required under this section shall be filed with the commissioner annually on or before June 30.

R590-148-26. Licensing.

A producer is not authorized to sell, solicit or negotiate with respect to long-term care insurance except as authorized by Chapter 23 of Title 31A.

R590-148-27. Discretionary Powers of Commissioner.

The commissioner may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this rule with respect to a specific long-term care insurance policy or certificate upon a written finding that:

(1) the modification or suspension would be in the best interest of the insured; and

(2) the purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

(3) one of the following occur:

(a) the modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care;

(b) the policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of the community; or

(c) the modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

R590-148-28. Penalties.

In addition to any other penalties provided by the laws of this state any insurer and any agent found to have violated any requirement of this state relating to the rule of long-term care insurance or the marketing of this insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to $10,000, whichever is greater.

R590-148-29. Enforcement Date.

The department will enforce all sections of the rule not already including a compliance date 45 days from the date the rule takes effect.

R590-148-30. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this and the provisions of this rule are declared to be severable.

KEY: insurance
April 28, 2005 31A-2-201
Notice of Continuation August 14, 2002 31A-22-1404

R590. Insurance, Administration.
R590-212. Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits.
R590-212-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Authority to promulgate rules defining the type of accounts to be used for deposited trust funds is provided in Subsection 31A-23a-409(2)(b).

R590-212-2. Purpose.

This rule specifies the characteristics of a depository account that may be used by a title insurance agency to deposit trust funds.

R590-212-3. Scope.

This Rule applies to all title insurers, title insurance agencies and title insurance producers and all employees, representatives and any other party working for or on behalf of said entities, whether as a full time or part time employee, or as an independent contractor.

R590-212-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, 31A-23a-102 and the following:

(1) "Demand deposit account" refers to a federally insured deposit account from which withdrawals may be made by check and the depositor or a holder of a check drawn on the account has a legal right to immediate payment from the bank upon presentment of the check or other withdrawal request.

(2) "Depositor" refers to a title insurance agency that has deposited, in a qualifying trust account, funds it holds in trust in connection with a real estate transaction.

(3) "Repurchase agreement" is an agreement in which a bank agrees to sell to a depositor a security or other asset at a specified price with a commitment to repurchase the security, or other asset, at a later date for a specified price.

(4) "Sweep account" refers to a demand deposit account subject to an agreement authorizing the bank to withdraw from the account funds exceeding a specified amount and deposit those funds into an interest bearing account, purchase specified securities subject to a repurchase agreement, or purchase shares of a mutual fund, then redeposit those funds into the demand account, when needed, to pay checks presented for payment or other request for withdrawal.

(5) "Trust account" means an account denominated as a trust account in which the depositor is trustee.

(6) "Money market mutual fund" means a mutual fund that is registered and authorized under applicable federal and state securities laws to sell its shares to the public and managed to maintain a par value of $1 per share.

R590-212-5. Account Requirements.

(1) Authority to Retain Earnings on Funds Held in Trust. Subsection 31A-23a-406(1) permits a title insurance agency to retain earnings on funds held in a qualifying trust account if authorized by the contract between the trustee and the person on whose behalf the funds are held.

(2) Responsibility for Compliance. Each depositor is responsible for determining that the terms and conditions of an account, in which it deposits funds held in trust, comply with the requirements of this rule.

(3) Records Required. Each title insurance agency must retain adequate records of all deposits in a trust account, including those utilizing a sweep feature, to establish individual account balances for all persons whose funds are held in trust.

(4) Qualified Accounts. Funds subject to this rule must be deposited or held in:

(a) a deposit account insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or any successor federal deposit insurance; or

(b) a sweep account if it meets all of the following qualifications:

(i) funds are initially deposited into a federally insured demand deposit account;

(ii) the bank, in accordance with an agreement with the depositor, withdraws funds exceeding a specific balance in the account to purchase:

(A) U.S. Government securities on behalf of the depositor that are held in a segregated account in the bank subject to a repurchase agreement with the bank.

(B) shares in a money market mutual fund that only holds obligations of the U.S. Treasury or Agencies of the U.S. Government, and

(iii) the bank is obligated and able to repurchase the securities or sell or redeem the shares or interest at any time at par and deposit the funds in the demand deposit account to maintain a minimum balance and pay withdrawals.

(5) Obligation of Depositor for Losses. A depositor may only deposit funds into a sweep account if it agrees to reimburse a trust beneficiary for any decline in value below par of the funds deposited, regardless of the cause of the decline in value.

(6) Authorization and Disclosure Obligation. Any depositor who uses an account described in Subsection R590-212-5.(4)(b) must:

(a) receive written authorization from those persons on whose behalf the funds are deposited stating that the depositor may receive all earnings which may be realized from the trust fund deposit; and

(b) provide full written disclosure to all persons on whose behalf the funds are deposited, explaining the characteristics of a sweep account deposit as described in U.A.C. Rule R590-212-5(4)(b).

R590-212-6. Penalties.

Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their insurance license or Certificate of Authority, and any other penalties or measures as are determined by the commissioner in accordance with law.

R590-212-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any 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.

KEY: insurance, title
July 12, 2002 **31A-2-201**
31A-23a-409

R590. Insurance, Administration.
R590-226. Submission of Life Insurance Filings.
R590-226-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsection 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).

R590-226-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting:

(a) life insurance filings required by Section 31A-21-201; and

(b) report filings required by R590-177.

(2) This rule applies to:

(a) all types of individual and group life insurance and variable life insurance; and

(b) group life insurance contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-226-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule must be used for all filings. Actual copies may be used or you may adapt them to your word processing system. If adapted, the content, size, font, and format must be similar.

(2) The following documents are hereby incorporated by reference and are available on the department's website, www.insurance.utah.gov.

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, 2005.

(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated January 1, 2005.

(c) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, 2003.

(d) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document Form Filing Attachment," dated January 1, 2003.

(e) "Utah Life Filing Certification," dated January 1, 2004.

(f) "Utah Life, Annuity, Credit Life, and Credit Accident and Health Group Questionnaire," dated January 1, 2004.

(g) "Utah Life, Annuity, Credit Life, and Credit Accident and Health Request for Discretionary Group Authorization," dated January 1, 2004.

(h) "Utah Annual Life Insurance Illustration Certification Filing Checklist," dated January 1, 2004.

R590-226-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Alternate information" means:

(a) a list of the states to which the filing was submitted, with any state actions;

(b) the reason for not submitting the filing to the domicile state; and

(c) identifying any points of conflict between the filing and domicile state laws or rules.

(2) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(3) "Data page" means the page or pages in a policy or certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as policy specifications, policy schedule, policy information, etc.

(4) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(5) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(6) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy, for example, a ear exclusion endorsement, a name change endorsement and a tax qualification endorsement.

(7) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(8) "Filer" means a person or entity that submits a filing.

(9) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a form;

(c) a document;

(d) an application;

(e) a report;

(f) a certificate;

(g) an endorsement;

(h) a rider;

(i) a life insurance illustration;

(j) a statement of policy cost and benefit information; and

(k) an actuarial memorandum, demonstration, and certification.

(10) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.

(11) "Letter of Authorization" means a letter signed by an officer of the insurer on whose behalf the filing is submitted that designates filing authority to the filer.

(12) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(13) "Order to Prohibit Use" means an order issued by the commissioner that forbids the use of a filing.

(14) Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(15) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit, for example, a waiver of premium rider, an accidental death benefit rider and a term insurance rider.

(16) "Type of insurance" means a specific life insurance product including, but not limited to, term, universal, variable, or whole life. Refer to the NAIC Coding Matrix.

R590-226-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, and complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Insurers and filers are responsible for assuring compliance with Utah laws and rules. Filings not in compliance with Utah laws and rules are subject to regulatory action under Section 31A-2-308.

(3) Filings that do not comply with this rule will be rejected and returned to the filer. Rejected filings are not considered filed with the department.

(4) Prior filings will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) Filings may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is found to be not in compliance with Utah laws and rules, an ORDER TO PROHIBIT USE will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected policyholders.

(6) Filing correction:

(a) No filing transmittal is required when clerical or typographical corrections are made to a filing previously filed if the corrected filing is submitted within 30 days of the date "filed" with the department. The filer will need to reference the original filing.

(b) A new filing is required if the clerical or typographical corrections are made more than 30 days after the filed date of the original filing. The filer will need to reference the original filing.

(7) Filing withdrawal. A filer must notify the department when the filer withdraws a previously filed form, rate, or supplementary information.

R590-226-6. Filing Submission Requirements.

Filings must be submitted by market type and type of insurance. A filing may not include more than one type of insurance, or request filing for more than one insurer. A complete filing consists of the following documents submitted in the following order:

(1) Transmittal. Note: Based on the use of the NAIC Transmittal Form, a cover letter is not required. The "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document" must be used. It can be found at www.insurance.utah.gov/LH_Trans.pdf.

(a) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:

(i) "NAIC Coding Matrix"
www.insurance.utah.gov/LifeA&H_Matrix.pdf,

(ii) "NAIC" Instruction Sheet"
www.insurance.utah.gov/LH_Trans_Inst.pdf,

(iii) "Life Content Standards"
www.insurance.utah.gov/Life_STM.html.

(iv) Do not submit the documents described in section (a)(i), (ii), and (iii) with a filing.

(b) Filing Description. The following information must be included in the Filing Description on the transmittal and must be presented in the order shown below:

(i) Domicile Approval. Foreign insurers and filers must first submit filings to their domicile state.

(A) If a filing was submitted to the domicile state, provide a stamped copy of the approval letter from the domicile state for the filing

(B) If a filing was not submitted to the domicile state, or the domicile state did not provide specific approval for the filing, then alternate information must be provided.

(ii) Marketing Facts.

(A) List the issue ages.

(B) List the minimum death benefit.

(C) Identify and describe the type of group.

(D) Identify the intended market for the filing, such as senior citizens, nonprofit organization, association members, corporate owned, bank owned, etc.

(E) Describe the marketing and advertising in detail, i.e. through a marketing association, mass solicitation, electronic media, financial institutions, Internet, telemarketing, or individually through licensed producers.

(iii) Description of Filing.

(A) Provide a detailed description of the purpose of the filing.

(B) Describe the benefits and features of each form in the filing including specific features and options, including nonforfeiture options.

(C) Identify any new, unusual or controversial provisions.

(D) Identify any unresolved previously prohibited provisions and explain why the provisions are included in the filing.

(E) Explain any changes in benefits, charges, terms, premiums, or other provisions that may occur while the policy is in force.

(F) If the filing is replacing or modifying a previous submission, provide information that identifies the filing being replaced or modified, the Utah filed date, and a detailed description of the changes and highlight the changed provisions.

(G) If the filing includes forms for informational purposes, provide the dates the forms were filed.

If filing an application, rider or endorsement, and the filing does not contain a policy, identify the affected policy form number, the Utah filed date, and describe the effect of the submitted forms on the base policy.

(iv) Underwriting Methods. Provide a general explanation of the underwriting applicable to this filing.

(2) Certification. In addition to completing the certification on the NAIC transmittal, the filer must complete and submit the "Utah Life Insurance Filing Certification." A filing will be rejected if the certification is missing or incomplete. A certification that is inaccurate may subject the filer to administrative action.

(3) Group Questionnaire or Discretionary Group Authorization Letter. All group filings must identify each type of group, and include either, a completed "Utah Life, Annuity, Credit Life and Credit Accident and Health Insurance Group Questionnaire," or a copy of the "Utah Life, Annuity, Credit Life and Credit Accident and Health Discretionary Group Authorization Letter."

(4) Letter of Authorization. When the filer is not the insurer, a letter of authorization from the insurer must be included. The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(5) Statement of Variability. Any item that is variable must be contained within the brackets. Each variable item must be identified and explained in a statement of variability. If the information contained within the brackets changes, the form must be refiled.

(6) Items being submitted for filing. Refer to each applicable subsection of this rule for general procedures and additional procedures on how to submit forms and reports.

(7) Life Insurance Illustration Materials. If the life insurance form is identified as illustrated, the filing must include a sample:

(a) basic illustration completed with data in John Doe fashion;

(b) current illustration actuary's certification;

(c) company officer certification; and

(d) sample annual report.

(8) Statement of Policy Cost and Benefit Information. If the life insurance form is not illustrated, the filing must include a sample of the Statement of Policy Cost and Benefit Information.

(9) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(a) description of the coverage in detail;

(b) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(c) a certification of compliance with Utah law.

(10) Return Notification Materials.

(a) Return notification materials are limited to:

(i) a copy of the transmittal; and

(ii) a self-addressed, stamped envelope.

(b) Notice of filing will not be provided unless return notification materials are submitted.

R590-226-7. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.

(d) The form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(i) If the market intended is for the senior age group, the form must be completed with data representative of senior insureds.

(ii) All John Doe data in the forms including the specification page must be accurate and consistent with the actuarial memorandum, the basic illustration, the Statement of Policy Cost and Benefit information, and the application, as applicable.

(iii) When submitting a rider or endorsement, include a sample policy data page that includes the rider or endorsement information.

(iv) Forms may include variable data within brackets. All variable data must be identified within the specific section, or a statement of variability included with the submission.

(2) Policy Filings.

(a) Each type of insurance must be filed separately. A policy filing consists of one policy form for a single type of insurance including its related forms, such as the application, sample data page, rider, endorsement, and actuarial memorandum.

(b) A policy data page must be included with every policy filing.

(c) Only one policy form for a single type of insurance may be filed, in each filing a life insurance policy with different premium payment periods is considered one form.

(d) A policy data page that changes the basic feature of the policy may not be filed without including the entire policy form in the filing. A filing consisting of only a data page without the policy form will be rejected as incomplete.

(3) Rider or Endorsement Filing.

(a) Related riders or endorsements may be filed as a single filing.

(b) A rider or endorsement that is based on morbidity risks, such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings."

(c) A single rider or endorsement that affects multiple policy forms may be filed separately if the Filing Description references all affected forms.

(d) The filing must include:

(i) a listing of all base policy form numbers, title and dates filed with the Utah Insurance Department;

(ii) a description of how each filed rider or endorsement affects the base policy; and

(iii) a sample data page with data for the submitted form.

(4) Application Filings. Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing. If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

R590-226-8. Additional Procedures for Individual Life Insurance Forms and Group Life Insurance Certificates Marketed Individually.

(1) Insurers filing life insurance forms are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) R590-79, "Life Insurance Disclosure for Policy Summary;"

(d) R590-93, "Replacement of Life Insurance and Annuities;"

(e) R590-94, "Smoker/Nonsmoker Mortality Tables";

(f) R590-95, "Minimum Nonforfeiture Standards 1980 CSO and 1980 CET Mortality Tables;"

(g) R590-98, "Unfair Practice in Payment of Life Insurance and Annuity Policy Values;"

(h) R590-108, "Interest Rate During Grace Period or Upon Reinstatement of Policy;"

(i) R590-122, "Permissible Arbitration Provisions;"

(j) R590-145, "Accelerated Benefits;"

(k) R590-177, "Life Insurance Illustrations;"

(l) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

(m) R590-198, "Valuation of Life Insurance Policies;" and

(n) R590-223, "Rule to Recognize 2001 CSO Mortality Table."

(2) Every individual life insurance policy, rider or endorsement providing benefits, and every group life insurance filing including certificates that are marketed individually, shall include an actuarial memorandum, a demonstration, and a certification of compliance for nonforfeiture and valuation. Refer to the following:

(a) Section 31A-22-408, "Standard Nonforfeiture Law for Life Insurance;"

(b) Section 31A-17 Part V, "Standard Valuation Law."

(3) When submitting accelerated benefits riders or provisions, the filing must include an actuarial memorandum for the accelerated benefit, a solicitation disclosure form, and a benefit payment disclosure form.

R590-226-9. Additional Procedures for Group Market Filings.

(1) Insurers submitting group life insurance filings are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;"

(d) R590-79, "Life Insurance Disclosure Rule;"

(e) R590-145, "Accelerated Benefits;"

(f) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A policy must be included with each certificate filing along with a master application and enrollment form.

(3) Statement of Policy Cost and Benefit Information. A statement of policy cost and benefit information must be included in non-term group life insurance and preneed funeral policies or prearrangements. This disclosure requirement shall extend to the issuance or delivery of certificates as well as to the master policy in compliance with R590-79-3.

(4) Actuarial Memorandum. An actuarial memorandum must be included in all group life insurance filings describing the coverage in detail and certifying compliance with applicable laws and rules. For non-term group life filings, the memorandum must also demonstrate nonforfeiture compliance with Section 31A-22-515.

(5) Eligible Group. A filing for an eligible group must include a completed "Utah Life, Annuity, Credit Life, and Credit Accident and Health Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Section 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(6) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a form filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life, Annuity, Credit Life, and Credit Accident and Health Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) Discretionary group filings that do not provide authorization documentation will be rejected.

(d) Any changes to an authorized discretionary group must be submitted to the department, such as; change of name, trustee, domicile state, within 30 days of the change.

(e) The commissioner may periodically re-evaluate the group's authorization.

R590-226-10. Additional Procedures for Variable Life Filings.

(1) Insurers submitting variable life filings are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;"

(b) R590-133, "Variable Contracts."

(2) A variable life insurance policy must have been previously approved or accepted by the insurer's state of domicile before it is submitted for filing in Utah.

(3) Information regarding the status of the filing of the variable life insurance policy with the Securities and Exchange Commission must be included in the filing.

(4) The transmittal description and the actuarial memorandum must:

(a) describe the types of accounts available in the policy; and

(b) identify those accounts that are separate accounts, including modified guaranteed accounts, and those that are general accounts.

(5) The actuarial memorandum must demonstrate nonforfeiture compliance:

(a) for separate accounts pursuant to Section 31A-22-411; and

(b) for fixed interest general accounts pursuant to Section 31A-22-408.

(c) In addition, for fixed accounts, the actuarial memorandum must:

(i) identify the guaranteed minimum interest rate, and

(ii) identify the maximum surrender charges.

(6) A prospectus is not required to be filed.

R590-226-11. Additional Procedures for Policies, Riders or Endorsements Providing a Combination of Life and Accident and Health Benefits.

(1) A combination filing consists of a policy, rider or endorsement that creates a product that provides both life and accident and health insurance benefits. The two types of acceptable filings are:

(a) a rider or endorsement attached to a policy; or

(b) an integrated policy.

(2) Combination filings take considerable time to process and will be processed separately by both the life insurance and the health insurance divisions.

(3) Combination filings must include transmittals for both the life insurance and the health insurance divisions.

(4)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.

(b) For a rider or endorsement, the filing must be submitted to the appropriate division based on benefits provided in the rider or endorsement.

(5) The Filing Description must identify the filing as having a combination of insurance types, such as:

(a) term policy with a long-term care benefit rider; or

(b) major medical policy that includes a life insurance benefit.

R590-226-12. Insurer Annual Reports.

(1) All insurer annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted along with the properly completed report checklist.

(2) "Life Insurance Illustration Certification Annual Report".

(a) Filing must comply with R590-177-11. Life insurers marketing life insurance with an illustration shall provide an annual certification report to the commissioner each year by a date determined by the insurer.

(b) The report must include:

(i) a completed "Utah Life Insurance Illustration Certification Annual Report Checklist";

(ii) two cover letters along with a self-addressed stamped envelope;

(iii) an Illustration Actuary's Certification signed and dated;

(iv) a Company Officer's Certification signed and dated; and

(v) a list of all policies forms for which the certification applies.

R590-226-13. Electronic Filings.

Filers submitting electronic filings must follow the requirements for both the electronic system and this rule, as applicable.

R590-226-14. Correspondence, Status Checks, and Responses.

(1) Correspondence. When corresponding with the department, filers must provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) copy of the original transmittal.

(2) Status Checks. Filers may request the status of their filing by telephone, or email 60 days after the date of submission.

(3) Response to an Order.

(a) A response to an order must include:

(i) a response cover letter identifying the changes made;

(ii) a copy of the Order to Prohibit Use;

(iii) one copy of the revised documents with all changes highlighted; and

(iv) return notification materials, which consist of a copy of the response cover letter and a self-addressed stamped envelope.

(4) Rejected Filings.

(a) A rejected filing is NOT considered filed. If

resubmitted it is considered a new filing.

(b) If resubmitting a previously rejected filing, the new filing must include a copy of the rejection notice.

R590-226-15. Penalties.

Persons found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-226-16. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule May 1, 2004.

R590-226-17. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.

KEY: life insurance filings
April 28, 2005 **31A-2-201**
31A-2-201.1
31A-2-202

R590. Insurance, Administration.
R590-227. Submission of Annuity Filings.
R590-227-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsection 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).

R590-227-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting annuity filings under Section 31A-21-201.

(2) This rule applies to:

(a) all types of individual and group annuities, variable annuities; and

(b) group annuity contracts issued to nonresident contract holders, including trusts, when Utah residents are provided coverage by certificates.

R590-227-3. Incorporation by Reference.

(1) The department requires that documents described in this rule must be used for all filings. Actual copies may be used or you may adapt them to your word processing system. If adapted, the content, size, font, and format must be similar.

(2) The following documents are hereby incorporated by reference and are available at www.insurance.utah.gov.

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, 2005.

(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated January 1, 2005.

(c) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, 2003.

(d) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document Form Filing Attachment," dated January 1, 2003.

(e) "Utah Annuity Filing Certification," dated May 1,2004.

(f) "Utah Life, Annuity, Credit Life, and Credit Accident and Health Group Questionnaire," dated May 1, 2004.

(g) "Utah Life, Annuity, Credit Life, and Credit Accident and Health Request for Discretionary Group Authorization," dated May 1, 2004.

R590-227-4. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Alternate information" means:

(a) a list of the states to which the forms have been filed, with any state actions;

(b) the reason for not submitting the form to the domicile state; and

(c) identifying any points of conflict between the form and domicile state laws or rules.

(2) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(3) "Contract" means the annuity policy including attached endorsements and riders;

(4) "Data page" means the page or pages in a contract or certificate that provide the specific data for the annuitant detailing the coverage provided and may be titled by the insurer as contract data page, specifications page, contract schedule, etc.

(5) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(6) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(7) "Endorsement" means a written agreement attached to an annuity contract that alters a provision of the contract, for example, a name change endorsement and a tax qualification endorsement.

(8) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(9) "Filer" means a person or entity that submits a filing.

(10) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a contract;

(b) a form;

(c) a document;

(d) an application;

(e) a report;

(f) a certificate;

(g) an endorsement;

(h) a rider; and

(i) an actuarial memorandum, demonstration, and certification.

(11) "Issue Ages" means the range of minimum and maximum ages for which a contract or certificate will be issued.

(12) "Letter of Authorization" means a letter signed by an officer of the insurer on whose behalf the filing is submitted that designates filing authority to the filer.

(13) "Market type" means the type of contract that indicates the targeted market such as individual or group.

(14) "Order to Prohibit Use" means an order issued by the commissioner that forbids the use of a filing.

(15) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the insurer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(16) "Rider" means a written agreement attached to an annuity contract or certificate that adds a benefit, for example, a waiver of surrender charge, a guaranteed minimum withdrawal benefit and a guaranteed minimum income benefit.

(17) "Type of insurance" means a specific type of annuity including, but not limited to, equity indexed annuity, single premium immediate annuity, modified guaranteed annuity, deferred annuity, or variable annuity. Refer to the NAIC Coding Matrix.

R590-227-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, and complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Insurers and filers are responsible for assuring compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filings that does not comply with this rule may be rejected and returned to the filer. A rejected filing is not considered filed with the department.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) Filings may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is found to be not in compliance with Utah laws and rules, an ORDER TO PROHIBIT USE will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected contract holders.

(5) Filing Correction.

(a) No filing transmittal is required when clerical or typographical corrections are made to a filing previously filed if the corrected filing is submitted within 30 days of the date

"filed" with the department. The filer will need to reference the original filing.

(b) A new filing is required if a clerical or typographical correction is made more than 30-days after the filed date of the original filing. The filer will need to reference the original filing.

(7) Filing withdrawal. A filer must notify the department when the filer withdraws a previously filed form, rate, or supplementary information.

R590-227-6. Filing Submission Requirements.

Filings must be submitted by market type and type of insurance. A filing may not include more than one type of insurance, or request filing for more than one insurer. A complete filing consists of the following documents and submitted in the following order:

(1) Transmittal. Note: Based on the use of the NAIC Transmittal Document, a cover letter is not required. The "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document" must be used. It can be found at www.insurance.utah.gov/LH_Trans.pdf.

(a) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:

(i) "NAIC Coding Matrix" www.insurance.utah.gov/LifeA&H_Matrix.pdf,

(ii) "NAIC" Instruction Sheet" www.insurance.utah.gov/LH_Trans_Inst.pdf,

(iii) "Life Content Standards" www.insurance.utah.gov/Life_STM.html.

(iv) Do not submit the documents described in section (a)(i), (ii), and (iii) with a filing.

(b) Filing Description Section. The following information must be included in the Filing Description Section of the NAIC transmittal and must be presented in the order shown below:

(i) Domiciliary Approval. Foreign insurers and filers must first submit filings to their domicile state.

(A) If a filing was submitted to the domicile state provide a stamped copy of the approval letter from the domicile state for the filing.

(B) If a filing was not submitted to the domicile state, or the domicile state did not provide specific approval for the filing, then alternate information must be provided.

(ii) Marketing Facts.

(A) List the issue ages.

(B) List the minimum initial premium.

(C) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, including any particular tax qualified market and the federal law under which the contract will be marketed.

(D) Describe the marketing and advertising in detail, i.e. individually solicited through licensed producers, marketed through a marketing association, financial institutions, Internet, or telemarketing.

(iii) Description of Filing.

(A) Provide a detailed description of the purpose of the filing.

(B) Describe the benefits and features of each form in the filing including specific features and options, including nonforfeiture options.

(C) Identify any new, unusual, or controversial provisions.

(D) Identify any unresolved previously prohibited provisions and explain why the provisions are included in the filing.

(E) Explain any changes in benefits, charges, terms, premiums, or other provisions that may occur while the contract is in force.

(F) If the filing is replacing or modifying a previous submission, provide information that identifies the filing being replaced or modified, the Utah filed date, and a detailed description of the changes and highlight the changed provisions.

(G) If the filing includes forms for informational purposes, provide the dates the forms were filed.

(H) If filing an application, rider, or endorsement, and the filing does not contain a contract, identify the affected contract form number, the Utah filed date, and describe the effect of the submitted forms on the base contract.

(iv) Underwriting Methods. Provide a general explanation of the underwriting applicable to this filing.

(2) Certification. In addition to completing the certification on the NAIC transmittal, the filer must complete and submit the "Utah Annuity Filing Certification". A filing will be rejected if the certification is missing or incomplete. A certification that is inaccurate may subject the filer to administrative action.

(3) Group Questionnaire or Discretionary Group Authorization Letter. All group filings must identify each type of group, and include either a completed "Utah Life, Annuity, Credit Life and Credit Accident and Health Insurance Group Questionnaire", or copy of the "Utah Life, Annuity, Credit Life and Credit Accident and Health Insurance Discretionary Group Authorization letter".

(4) Letter of Authorization. If the filer is not the insurer, a letter of authorization from the insurer must be included. The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(5) Statement of Variability. Any item that is variable must be contained within the brackets. Each variable item must be identified and explained in a statement of variability. If the information contained within the brackets changes, the form must be refiled.

(6) Items being submitted for filing. Refer to each applicable subsection of this rule for general procedures and additional procedures on how to submit forms and reports.

(7) Annuity Report. All annuity filings must include a sample annuity annual report.

(8) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration, and a certification of compliance are required in annuity filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(a) description of the coverage in detail;

(b) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(c) a certification of compliance with Utah law.

(9) Return Notification Materials.

(a) Return notification materials are limited to:

(i) a copy of the transmittal; and

(ii) a self-addressed, stamped envelope.

(b) Notice of filing will not be provided unless return notification materials are submitted.

R590-227-7. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.

(d) The form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(i) If the market intended is for the senior age market, the form must be completed with data representative of senior annuitants.

(ii) All John Doe data in the forms including the specification page must be accurate and consistent with the actuarial memorandum, the application, and any marketing materials, as applicable.

(iii) When submitting a rider or endorsement, include a

sample data page that includes the rider or endorsement information.

(iv) Forms may include variable data. All variable data must be identified within the brackets or a statement of variability must be included with the submission.

(2) Contract Filings.

(a) Each type of annuity must be filed separately. A contract filing consists of one contract form for a single type of insurance including its related forms, an application, data page, rider or endorsement, and an actuarial memorandum.

(b) A data page must be included with every contract filing.

(c) Only one contract form for a single type of insurance may be submitted.

(d) A data page that changes the basic feature of the contract may not be filed without including the entire contract form in the filing. Separate data page filings without the contract form will be rejected as incomplete.

(3) Rider or Endorsement Filings.

(a) Related riders or endorsements may be filed together as a single filing.

(b) A single rider or endorsement that affects multiple related forms must reference all affected contract forms.

(c) A rider or endorsement that is based on morbidity risks such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings".

(d) The filing must include:

(i) a listing of all base contract form numbers, title and dates filed with the Utah Insurance Department.

(ii) a description of how each filed rider or endorsement affects the base contract.

(iii) a sample data page with data for the submitted form.

(4) Application Filings. Each application or enrollment form may be submitted as a separate filing or may be filed with its related contract or certificate filing. If an application has been previously filed or is filed separately, an informational copy of the application must be included with a contract or certificate filing.

R590-227-8. Additional Procedures for Fixed Annuity Filings.

(1) Insurers filing annuity forms are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) R590-93, "Replacement of Life Insurance and Annuities;"

(d) R590-96, "Annuity Mortality Tables;" and

(e) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) Every filing of an individual annuity contract, rider or endorsement providing benefits, and every group annuity filing including certificates that are marketed individually, shall include an actuarial memorandum, a demonstration, and a certification of compliance with nonforfeiture and valuation laws:

(a) Section 31A-22-409, "Standard Nonforfeiture Law for Deferred Annuities;" and

(b) Section 31A-17 Part V, "Standard Valuation Law."

(3) When submitting annuity filings the filing description of the transmittal must:

(a) identify the specific subsection of the Utah nonforfeiture law, which applies to the submitted annuity;

(b) describe the basic features of the form submitted;

(c) identify and describe the interest earning features; including the guaranteed interest rate, the guaranteed interest terms, and any market value adjustment feature;

(d) describe the guaranteed and nonguaranteed values including any bonuses;

(e) describe all charges, fees and loads;

(f) list and describe all accounts, options and strategies, if any;

(g) identify whether the accounts are fixed interest general accounts, registered separate accounts including modified guaranteed separate accounts; and

(h) describe any restrictions or limitations regarding withdrawals, surrenders, and the maturity date or settlement options.

(4) The contract must be complete with a sample specification page attached.

(5) The actuarial memorandum must:

(a) be currently dated and signed by the actuary;

(b) identify the specific subsections of the Utah nonforfeiture law, which applies to the submitted annuity;

(c) describe all contract provisions in detail, including all guaranteed and non-guaranteed elements, that may affect the values;

(d) identify the guaranteed minimum interest crediting rates;

(e) describe in detail the particular methods of crediting interest, including:

(i) guaranteed fixed interest rates; and

(ii) guaranteed interest terms.

(f) specifically identify and describe all charges and fees, including loads, surrender charges, market value adjustments or any other adjustment feature;

(g) describe in detail all factors that are used to calculate guaranteed minimum nonforfeiture values under the contract and the elements used in the calculation of the minimum values required by the law; and

(h) include the formulas used to calculate the minimum guaranteed values provided by the contract and the formulas used to calculate the minimum guaranteed values required by the applicable subsections of the nonforfeiture law.

(6) The actuarial demonstration must:

(a) be submitted on paper and on a diskette on which the formulas are not hard coded,

(b) demonstrate compliance with the applicable nonforfeiture law for representative ages and the highest possible issue age,

(c) numerically demonstrate that the values based on the guaranteed minimum interest rates, the maximum surrender charges, fees, loads, and any other factors affecting values, provide values that are in compliance with the Standard Nonforfeiture Law using both the retrospective and the prospective tests, each clearly identified, and include the following:

(i) For the retrospective test, describe the net consideration and the interest rates used in the accumulation. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(ii) For the prospective test, identify the maturity value and the interest rate used for each respective year to determine the present value. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(7) The actuarial certification of compliance must be currently dated and signed by the actuary.

R590-227-9. Additional Procedures for Group Annuity Filings.

(1) Insurers submitting group annuity filings are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;" and

(d) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A group contract must be included with each certificate filing along with the master application and enrollment form.

(3) Every group annuity filing must include an actuarial memorandum describing the features of the contract and certifying compliance with applicable Utah laws. A group filing that includes a group certificate that is marketed to individuals, must include an actuarial memorandum, demonstration and certification of compliance with the applicable Utah nonforfeiture law.

(4) Eligible Groups. A filing for an eligible group must include a completed "Utah Life, Annuity, Credit Life, Credit Accident and Health Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Sections 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(5) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life, Annuity, Credit Life, and Credit Accident and Health Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) Discretionary group filings that do not provide authorization documentation will be rejected.

(d) Any changes to an authorized discretionary group must be submitted to the department, such as; change of name, trustee, domicile state, within 30 days of the change.

(e) The commissioner may periodically re-evaluate the group's authorization.

R590-227-10. Additional Procedures for Variable Annuity Filings Procedures.

(1) Insurers submitting variable annuity filings are advised to review the following code sections and rule prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;" and

(b) R590-133, "Variable Contracts."

(2) A variable annuity contract must have been previously approved or accepted by the insurer's state of domicile before it is submitted for filing in Utah. Include the approval date in the submission.

(3) Information regarding the status of the filing of the variable annuity with the Securities and Exchange Commission must be included in the filing.

(4) The transmittal description and the actuarial memorandum must:

(a) describe the accounts available in the contract; and

(b) identify and describe those accounts that are separate accounts, including modified guaranteed annuities, and those accounts that are general accounts.

(5) The actuarial memorandum must describe all contract provisions in detail, including all guaranteed and non-guaranteed elements that may affect the values.

(6) The actuarial demonstration must numerically demonstrate compliance with the applicable nonforfeiture laws:

(a) for variable annuities, including modified guaranteed annuities, pursuant to Section 31A-22-411;

(b) for fixed interest general accounts pursuant to 31A-22-409, identify and describe all guaranteed factors that affect values, including:

(i) the guaranteed minimum interest rate; and

(ii) the maximum surrender charges and loads.

(7) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.

(8) A filing for a rider that provides benefits, such as guaranteed minimum death benefit and guaranteed minimum withdrawal benefit, must include an actuarial memorandum.

(9) A prospectus is not required to be filed.

R590-227-11. Electronic Filings.

Filers submitting electronic filings must follow the requirements for both the electronic system and this rule, as applicable.

R590-227-12. Correspondence, Inquiries, and Responses.

(1) Correspondence. When corresponding with the department, filers must provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) copy of the original transmittal.

(2) Status Checks. Filers may request the status of their filing by telephone, or email 60 days after the date of submission.

(3) Response to an Order.

(a) A response to an order must include:

(i) a response cover letter identifying the changes made;

(ii) a copy of the Order to Prohibit Use;

(iii) one copy of the revised documents with all changes highlighted; and

(iv) return notification materials, which consist of a copy of the response cover letter and a self-addressed stamped envelope.

(4) Rejected Filings.

(a) A rejected filing is NOT considered filed. If resubmitted it is considered a new filing.

(b) If resubmitting a previously rejected filing, the new filing must include a copy of the rejection notice.

R590-227-13. Penalties.

Persons found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-227-14. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule May 1, 2004.

R590-227-15. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.

KEY: annuity insurance filings
April 28, 2005 **31A-2-201**

31A-2-201.1
31A-2-202

R590. Insurance, Administration.
R590-228. Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings.
R590-228-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsection 31A-2-201(3), 31A-2-201.1, 31A-2-202(2), 31A-22-807.

R590-228-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting:

(a) Credit life and credit accident and health insurance filings required by Section 31A-21-201;

(b) Credit life and credit accident and health insurance rate filings required by Section 31A-22-807, R590-91; and

(c) report filings required by R590-91.

(2) This rule applies to all credit life insurance and credit accident and health insurance including group contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-228-3. Documents Incorporated by Reference.

(1) The department requires that documents described in this rule must be used for all filings. Actual copies may be used or you may adapt them to your word processing system. If adapted, the content, size, font, and format must be similar.

(2) The following documents are hereby incorporated by reference and are available at www.insurance.utah.gov.

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, 2005;

(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated January 1, 2005;

(c) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document," dated January 1, 2003;

(d) "NAIC Instruction Sheet for Life, Accident and Health, Annuity, Credit Transmittal Document Form Filing Attachment," dated January 1, 2003;

(e) "Utah Credit Life and Credit Accident and Health Filing Certification," dated January 1,2004;

(f) "Utah Life, Annuity, Credit Life, and Credit Accident and Health Group Questionnaire," dated January 1, 2004;

(g) "Utah Annual Credit Life and Credit Accident and Health Insurance Filing Checklist," dated January 1, 2004.

R590-228-4. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Alternate information" means:

(a) a list of the states to which the forms have been filed, the dates submitted, and any state actions;

(b) the reason for not submitting the form to the domicile state; and

(c) identifying any points of conflict between the form and domicile state laws or rules.

(2) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(3) "Data page" means the page or pages in a policy and certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as schedule page, schedule of benefits and premiums, etc.

(4) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(5) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy. An example is a company change of name.

(6) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(7) "File for Approval" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was approved.

(8) "Filer" means a person or entity that submits a filing.

(9) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a rate, rate methodologies;

(c) a form;

(d) a document;

(e) an application;

(f) a report;

(g) a certificate;

(h) an endorsement;

(i) a rider; and

(j) an actuarial memorandum and certification.

(10) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.

(11) "Letter of Authorization" means a letter signed by an officer of the insurer on whose behalf the filing is submitted that designates filing authority to the filer.

(12) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(13) "Order to Prohibit Use" means an order issued by the commissioner that forbids the use of a filing.

(14) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules; and

(b) returned to the insurer by the department with the reasons for rejection; and not considered filed with the department.

(15) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit. An example is a credit accident and health insurance rider.

(16) "Type of insurance" means a specific credit life and credit accident and health insurance product, as defined in the NAIC Coding Matrix, including, but not limited to, gross decreasing term, net decreasing term, level term, or truncated coverage. Refer to the NAIC Coding Matrix.

R590-228-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, and complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Insurers and filers are responsible for assuring compliance with Utah laws and rules. Filings not in compliance with Utah laws and rules are subject to regulatory action under Section 31A-2-308.

(3) Filings that do not comply with this rule may be rejected and returned to the filer. Rejected filings are not considered filed with the department.

(4) Prior filings will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) Filings may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is found to be not in compliance with Utah laws and rules, an ORDER TO PROHIBIT USE will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction. A new filing is required if clerical or typographical corrections are made more than 30-days after the filed date of the original filing. The filer will need to reference the original filing.

R590-228-6. Filing Submission Requirements.

Filings must be submitted by market type and type of insurance. A filing may not include more than one type of insurance; or request filing for more than one insurer. A complete filing consists of the following documents submitted in the following order:

(1) Transmittal. Note: Based on the use of the NAIC Transmittal Form, a cover letter is not required. The "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document" must be used. It can be found at www.insurance.utah.gov/LH_Trans.pdf.

(a) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:

(i) "NAIC Coding Matrix" www.insurance.utah.gov/LifeAandH_Matrix.pdf,

(ii) "NAIC" Instruction Sheet" www.insurance.utah.gov/LH_Trans_Inst.pdf,

(iii) "Life Content Standards" www.insurance.utah.gov/Life_STM.html

(iv) Do not submit the documents described in section (a)(i), (ii), and (iii) with a filing.

(b) Filing Description. The following information must be included in the Filing Description section of the transmittal and must be presented in the order shown below.

(i) Domicile Approval. Foreign insurers and filers must first submit filings to their domicile state.

(A) If a filing was submitted to the domicile state, provide a stamped copy of the approval letter from the domicile state for the filing.

(B) If a filing was not submitted to the domicile state, or the domicile state did not provide specific approval for the filing, then alternate information must be provided.

(ii) Marketing Facts.

(A) List the issue ages.

(B) Identify the intended market.

(C) Identify and describe the type of group.

(D) Identify the types and durations of loans to be insured.

(E) Describe the methods of premium charge.

(F) Describe the marketing and advertising in detail, i.e. through mass solicitation, financial institutions, telemarketing, or individually through licensed producers.

(iii) Description of Filing.

(A) Provide a detailed description of the purpose of the filing.

(B) Describe the benefits and features of each form.

(C) List the types of coverage to be provided, such as gross, net, full term, truncated and critical period.

(D) Identify and describe any new or nonstandard benefits or rating methodologies.

(E) Indicate whether the insurer has a Rating and Benefits Plan on file with the department.

(F) Identify any unresolved previously prohibited provisions and explain why the provisions are included in the current filing.

(G) If the filing is replacing or modifying a previous submission, provide information that identifies the filing being replaced or modified, the Utah filed date, and a detailed description of the changes and highlight the changed provisions.

(H) if the filing includes forms for informational purposes, provide the dates the forms were filed.

(I) if filing a rider, endorsement or application and the filing does not contain a policy, identify the affected policy form number, the Utah filed date, and describe the effect of the submitted forms on the base policy.

(iv) Underwriting Methods. Provide an explanation of the underwriting applicable to the filing.

(2) Certification. In addition to completing the certification on the NAIC transmittal, the filer must complete and submit the "Utah Credit Life and Credit Accident and Health Filing Certification". A filing will be rejected if the certification is missing or incomplete. A certification that is inaccurate may subject the filer to administrative action.

(3) Group Questionnaire. All group filings must include a completed group questionnaire.

(4) Letter of Authorization. When the filer is not the insurer, include a letter of authorization from the insurer. The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(5) Statement of Variability. Any information that is variable must be bracketed in the form and must be explained in a statement of variability. If after filing, the information contained within the brackets changes, the filing must be refiled.

(6) Items being submitted for filing. Include all forms, rates, and reports to be filed. Refer to each applicable subsection of this rule for procedures on how to submit forms, rates, and reports with required filing documents.

(7) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum with sample rate calculations and a certification of compliance are required in each filing. The memorandum must be currently dated and signed by the actuary representing the insurer.

(8) Rates. All rates must be filed prior to use. All rates must be in compliance with 31A-22-807 and R590-91. A rate filing is required with each form filing.

(9) Return Notification Materials.

(a) Return notification materials are limited to a copy of the transmittal and a self-addressed, stamped envelope.

(b) Notice of filing will not be provided unless return notification materials are submitted.

R590-228-7. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must be in final printed form or printer's proof format.

(d) The form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use. All John Doe data in the forms, including the premium rates and benefits, must be accurate and consistent with the actuarial memorandum and rate schedule. Forms may include variable data in brackets. All variable data must be identified within the brackets or a statement of variability must be included with the submission.

(2) Policy Filings. A policy filing consists of one policy form for a single type of insurance and its related forms, including the application, enrollment form, certificate, actuarial memorandum, certification, and rate schedule.

(3) Rider or Endorsement Filings. A rider or endorsement that provides benefits must include all filing documents required for a policy filing including:

(a) a listing of the base policy form number, title and dates filed with the department;

(b) a description of how the rider affects the base policy; and

(c) appropriate actuarial memorandum and rate schedule.

(4) Application Filings. An application or enrollment form may be submitted as a separate filing or filed with its related policy and certificate. If an application has been previously filed or is filed separately, an informational copy of the application must be included with a policy or certificate filing.

(5) Rates. Rates are considered "File for Approval".

R590-228-8. Additional Procedures for Credit Life and Credit Accident and Health Form and Rate Filings.

(1) Insurers are advised to review the following code

sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;"

(d) Section 31A-22 Part VI, "Accident and Health Insurance;"

(e) Section 31A-22 Part VIII, "Credit Life and Accident and Health;"

(f) R590-91, "Credit Life and Disability;" and

(g) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

(h) R590-192, "Unfair Health and Disability Claims Settlement Practices."

(2) A policy must be included with each certificate filing along with a master application and enrollment form.

(3) Actuarial Memorandum, Demonstration and Certification of Compliance. Each form and rate fling must include an actuarial memorandum, demonstration, and certification of compliance with Utah laws, signed and dated by the actuary representing the insurer.

(a) Actuarial memorandum must include a description of the following:

(i) types of coverage, such as gross or net decreasing, single or joint life, full term or truncated, critical period;

(ii) types of loans to be insured, such as open end, closed end,

(iii) types of premium charge: single premium, monthly outstanding balance, or other method explained in detail;

(iv) durations of loans and durations of coverage. Refer to 31A-22-801(2)(a);

(v) rates per unit, rating and premium methodologies including:

(A) formulas used for each type of coverage and premium method; and

(B) sample calculations for each type of coverage and premium method;

(vi) an explanation of whether the company has a Rating and Benefits Plan on file and if so, whether the submitted rates are consistent with the filed plan;

(vii) demonstration of compliance with applicable code and rules;

(viii) refund methods and calculation including formulas for each type of coverage; and

(ix) reserve bases including methods used.

(b) The actuarial certification must include certification of compliance that formulas and methods used produce rates that are in compliance with applicable Utah laws and rules for each type of coverage and duration in the filing.

(4) Rate Schedules.

(a) Rate schedules must be included for each type of coverage and for representative durations.

(b) Rates must be identified as prima facie rates, rates previously filed for compliance with the Rating and Benefits Plan required in R590-91-10, or deviated rates submitted pursuant to 31A-22-807, or rates on nonstandard coverage pursuant to R590-91-5.

(5) All benefits must be reasonable in relation to the premium charge. Insurers filing for approval of a rate higher than prima facie rates must comply with the requirements of 31A-22-807 and R590-91-10. Include a demonstration that the rates are reasonable in relation to the benefits.

R590-228-9. Insurer Annual Reports.

(1) All insurer annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted along with the properly completed report checklist.

(2) "Credit Life and Credit Accident and Health Annual Report."

(a) Filings must comply with R590-91-10. Every Credit Life, and Credit Accident and Health insurer marketing must file annually.

(b) The report must include:

(i) Utah Credit Life, and Credit Accident and Health Report Checklist;

(ii) a cover letter along with a self-addressed stamped envelope; and all required documents.

(iii) Annual report filings are due May 1 each year.

R590-228-10. Additional Procedures for Electronic Filings.

Filers submitting electronic filings must follow the requirements for both the electronic system and this rule, as applicable.

R590-228-11. Correspondence, Inquiries, and Responses.

(1) Correspondence. When corresponding with the department, filers must provide sufficient information to identify the original filing. Information should include:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) copy of the original transmittal.

(2) Status Checks. Filers can request the status of their filing by telephone, or email 60 days after the date of submission.

(3) Response to an Order.

(a) A response to an order must include:

(i) a response cover letter identifying the changes made;

(ii) a copy of the Order to Prohibit Use;

(iii) one copy of the revised documents with all changes highlighted; and

(iv) return notification materials, which consist of a copy of the response cover letter and a self-addressed stamped envelope.

(4) Rejected Filings. A rejected filing is NOT considered filed. If resubmitted it is considered a new filing. If resubmitting a previously rejected filing, the new filing must include a copy of the rejection notice.

R590-228-12. Penalties.

Persons found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-228-13. Enforcement Date.

The commissioner will begin enforcing the provision of this rule May 1, 2004.

R590-228-14. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.

KEY: credit insurance filings
April 28, 2005 **31A-2-201**
31A-2-201.1
31A-2-202

R652. Natural Resources; Forestry, Fire and State Lands.
R652-120. Wildland Fire.
R652-120-100. Authority.

This rule implements Article XVIII of the Utah Constitution and provides for the issuance of burning permits, the establishment of limited suppression areas, and conduct of prescribed burns under the authority of Sections 65A-8-1 and 65A-8-9.

R652-120-200. Burning Permits.

1. Burning permits shall be issued only by the following authorized officials: state forester, his staff, and persons designated by the state forester. Burning permits are required for open fires during the closed fire season as specified in Section 65A-8-9 and during any extension of the closed fire season proclaimed by the state forester.

2. The permit form, provided by the state forester, shall be filled out completely and in accordance with instructions determined and furnished by his office.

3. Permittees shall comply with any written restrictions or conditions imposed with the granting of the permit.

4. The permittee shall sign the permit form.

5. Burning permits will be issued only when in compliance with the Utah Air Conservation Regulations. The following requirements must be met with each burning permit issued:

(a) The permit is not valid and operative unless the Clearing Index is 500 or above. The clearing index is determined daily by the U.S. Weather Bureau and available from county health offices, the State Forester's Office or Area Offices of the Utah State Department of Health.

(b) A permit may be extended one day at a time, without inspection upon request to the issuing officer. The request must be made before the expiration of the permit.

6. Agriculture has a limited exemption to open burning restrictions for the Division of Forestry, Fire and State Lands rules as indicated in Section 65A-8-9 and the Utah Air Conservation Regulations as outlined in Section 19-2-114.

7. Burning permits shall not be issued when red flag conditions exist or are forecasted by the National Weather Service. Every permittee is required to contact the National Weather Service to assure that a red flag condition does not exist or is not forecasted. Permits are not valid or operative during declared red flag conditions.

R652-120-300. Limited Suppression Areas.

1. The division may establish fire management areas where the level and degree of suppression activities are to be commensurate with the value of the resources within the fire management area.

2. Fire management plans shall be available for public review and comment prior to implementation.

3. County commission approval is required for any fire management plan that provides for limited fire suppression action on private lands within a fire management area.

R652-120-400. Prescribed Fire.

1. All prescribed burns utilizing division assistance other than permitting must have a written burn plan that has been reviewed and approved by the division. Burn plans shall include at a minimum information to determine management objectives and procedures to attain the objectives. Data will be provided to deal with safety concerns and smoke management. The burn plan will detail needs to insure the prescribed burn occurs within prescription.

2. A private landowner or state lessee/permittee receiving assistance on a prescribed fire shall supply resources specified in the burn plan.

3. Fire-fighting equipment placed by the division in any county for fire protection purposes cannot be required to assist or be fully committed to a prescribed fire, but may be utilized as available.

R652-120-500. Management for Cultural Resources and Threatened and Endangered Species.

Cultural resources, paleontological resources, and threatened and endangered species which may be affected by a proposed prescribed fire or within a fire management plan will be considered, protected or mitigated, as may be required and practical.

KEY: administrative procedure, burns, permits, endangered species

1989	**65A-8-1**
Notice of Continuation April 28, 2005	**65A-8-9**

R657. Natural Resources, Wildlife Resources.
R657-12. Hunting and Fishing Accommodations for Disabled People.
R657-12-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12 and 63-46a-3, this rule provides the standards and procedures for a disabled person to:

(1) obtain a certificate of registration for taking wildlife from a vehicle;

(2) obtain a fishing license as authorized under Section 23-19-36(1);

(3) obtain a certificate of registration to participate in companion hunting;

(4) obtain a certificate of registration to receive a limited entry season extension;

(5) obtain a certificate of registration to receive a general deer or elk season extension; or

(6) obtain a certificate of registration to hunt with a crossbow.

R657-12-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Blind" means the person:

(i) has no more than 20/200 visual acuity in the better eye when corrected; or

(ii) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of the field of vision no greater than 20 degrees.

(b) "Crutch" means any mobility aid or assistive technology device, including a cane, crutch, walker, long or short braces, or other prosthetic or orthotic device which aids in mobility.

(c) "Loss of either or both lower extremities" means the permanent loss of use or the physical loss of one or both legs or a part of either or both legs which materially impedes a person's mobility.

(d) "Quadriplegic" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be physically unable to utilize a legal weapon.

R657-12-3. Providing Evidence of Disability for Obtaining a Fishing License.

(1) A resident may receive a free fishing license under Section 23-19-36(1) by providing evidence the person is blind, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities.

(2) A person may obtain this license at any division office.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a); or

(d) a signed statement by a licensed physician verifying the person is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-4. Obtaining Authorization to Hunt from a Vehicle.

(1) A person who is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities, and who possesses a valid license or permit to hunt protected wildlife may receive a certificate of registration to take protected wildlife from a vehicle pursuant to Section 23-20-12.

(2)(a) Applicants for the certificate of registration must appear in person at a division office and provide evidence of disability as provided in Subsections R657-12-3(3)(a), (b), or (d).

(b) Certificates of registration may be renewed annually.

(3) Wildlife may be taken from a vehicle under the following conditions:

(a) Only those persons with a valid hunting license or permit and a certificate of registration allowing them to hunt from a vehicle may discharge a firearm or bow from, within, or upon any motorized terrestrial vehicle;

(b) Shooting from a vehicle on or across any established roadway is prohibited;

(c)(i) Firearms must be carried in an unloaded condition, and a round may not be placed in the firearm until the act of firing begins, except as authorized in Title 53, Chapter 5, Part 7 of the Utah Code; and

(ii) Arrows must remain in the quiver until the act of shooting begins; and

(d) Certificate of registration holders must be accompanied by, and hunt with, a person who is physically capable of assisting the certificate of registration holder in recovering wildlife.

(4) Certificate holders must comply with all other laws and rules pertaining to hunting wildlife, including state, federal, and local laws regulating or restricting the use of motorized vehicles.

R657-12-5. Companion Hunting.

(1) A person may take a deer or elk for a person who is blind or quadriplegic provided the blind or quadriplegic person:

(a) satisfies hunter education requirements as provided in Section 23-19-11 and Rule R657-23;

(b) possesses the appropriate permit and tag;

(c) obtains a Certificate of Registration from the division authorizing the companion to take a deer or elk for the blind or quadriplegic person; and

(d) is accompanied by a companion who has satisfied the hunter education requirements provided in Section 23-19-11 and Rule R657-23.

(2) A person who is blind may obtain a Certificate of Registration from the Division by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that the applicant is blind as defined in Section R657-12-2(a).

(3)(a) A person who is quadriplegic may obtain a Certificate of Registration from the division upon submitting evidence of the disability.

(b) The division shall accept the following as evidence of an applicant's disability:

(i) obvious physical disability demonstrating the applicant is quadriplegic as defined in Section R657-12-2(2)(d); or

(ii) a signed statement by a licensed physician verifying that the applicant is quadriplegic as defined in Section R657-12-2(2)(d).

(4) The blind or quadriplegic person must be accompanied by the companion at all times while hunting, at the time of take, and while transporting the deer or elk.

R657-12-6. Special Season Extension for Disabled Persons - Limited Entry Hunts.

(1) A person may obtain a Certificate of Registration from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is blind, quadriplegic, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both

lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit, and tag.

(2) The division shall not issue a Certificate of Registration for a 30-day extension on any limited entry hunt where the extension will violate federal law.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a) or;

(d) a signed statement by a licensed physician verifying the person is quadriplegic, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-7. Special Season Extension for Disabled Persons - General Deer and Elk Hunts.

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer or elk season as provided in Subsection (2), provided the person requesting the extension:

(a) is blind, quadriplegic, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate permit and tag.

(2)(a) The extended general deer season may occur five days prior to the general season deer hunt date published in the proclamation of the Wildlife Board for taking big game.

(b) The extended general spike bull elk season may occur five days after the general season spike bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(c) The extended general any bull elk season may occur concurrently with the general youth any bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-8. Crossbows.

(1)(a) A person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment may receive a certificate of registration to use a crossbow to hunt big game, cougar, bear, turkey, waterfowl or small game during the respective archery or any weapon hunting seasons as provided in the applicable proclamations of the Wildlife Board for taking protected wildlife.

(b) The division shall accept the following as evidence of eligibility to use a crossbow:

(i) obvious physical disability, as provided in Subsection (1)(a), demonstrating the applicant is eligible to use a crossbow; or

(ii) provides a physician's statement confirming the disability as defined in Subsection (1)(a).

(2)(a) Any crossbow used to hunt big game, cougar, bear, turkey, waterfowl or small game must have:

(i) a stock that is at least 18 inches long;

(ii) a minimum draw weight of 125 pounds for big game, bear and cougar, or 60 pounds for turkey, waterfowl and small game;

(iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and

(iv) a positive safety mechanism.

(b) Arrows or bolts used must be:

(i) at least 18 inches long; and

(ii) must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring for big game, cougar, bear or turkey.

(3) The following equipment or devices may not be used:

(a) arrows with chemically treated or explosive arrowheads; or

(b) a bow with an attached electronic range finding device or a magnifying aiming device.

(4) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(5) A cocked crossbow may not be carried in or on a vehicle.

KEY: wildlife, wildlife law, disabled persons
April 15, 2005 23-20-12
Notice of Continuation September 20, 2002 63-46a-3

R708. Public Safety, Driver License.
R708-40. Driving Simulators.
R708-40-1. Purpose.

The purpose of this rule is to define standards for driving simulators for use in conjunction with driver training.

R708-40-2. Authority.

This rule is authorized by Subsection 53-03-505(1)(d).

R708-40-3. Definitions.

In addition to terms defined in 53-3-102,

(1) "Operator interaction" means a condition whereby a student driver operates simulation equipment that reacts and adjusts to the student's eye, hand, foot and operation.

(2) "Field of view" means the ability to see to the right, left as well as the center of a persons visual perspective, such as a "panoramic visual field".

R708-40-4. Standards for Driving Simulators.

(1) A fully interactive driving simulation device shall:

(a) provide for operator interaction by use of equipment that is substantially the same in overall physical size, function and construction characteristics as the controls and seating mechanisms found in an actual passenger motor vehicle;

(b) visually display the resulting vehicle positioning and effect of individualized operator interaction relative to the simulated visual and aural scenario in a manner that is substantially similar to typical conditions found in an actual passenger motor vehicle;

(c) be capable of maintaining a visual scene that changes in response to operator or instructor movements, and approximates a field of view that a student would experience if seated in the driver seat of an actual passenger motor vehicle;

(d) present a field of view that enables the operator to observe a driving condition of that operator's driving into an intersection and visually scanning both directions of traffic with proper head movements;

(e) present other vehicles in a simulated visual scenarios that can be readily perceived as behaving in a manner consistent with real-world driving experience;

(f) enable a student to physically respond to simulated visual scenarios in the areas of vehicle control, awareness, and general-rules-of-the-road which are listed in the Utah Driver Handbook. These include: signaling, proper use of lanes, turning, lane changes, overtaking and passing, right of way, response to emergency vehicles, allowances for pedestrians, stopping, parking, navigating a vehicle through highway work zones, traffic signs, signals and road markings, and pavement markings;

(g) provide an active physically felt, steering-wheel resistance as feedback to the student, that is similar to conditions typically experienced while operating an actual passenger motor vehicle;

(h) provide an instructor with information drawn from monitoring, assessment, feedback and storage of training performance data; and which

(i) imitate and model Utah driving conditions and environment.

(2) A non-fully interactive driving simulation device shall conform to the above description of a full interactive driving simulation device, except that it does not present a student with a panoramic "side and front" field of view, is used by two or more students, or does not provide an individual student's performance information as feedback to the student.

(3) A driving simulator that does not conform to the characteristics as outlined in Section R708-40-4(1) above, is not acceptable as a fully interactive driving simulator in a driver education program as in accordance with Section 53-3-505.5(2)(b).

(4) A driving simulator that does not conform to the characteristics as outlined in Section R708-40-4(2) above, is not acceptable as a non-fully interactive driving simulator in a driver education program as in accordance with Section 53-3-505.5(2)(c).

KEY: driving simulators
April 18, 2005 **53-3-505**

R765. Regents (Board of), Administration.
R765-626. Lender-of-Last-Resort Program.
R765-626-1. Purpose.

The purpose of this rule is to provide the terms and conditions under which UHEAA will provide Lender-of-Last-Resort (LLR) loans to borrowers who have otherwise been unable to obtain a subsidized or unsubsidized Federal Stafford Loan from a lender participating in the UHEAA loan program.

R765-626-2. References.

2.1 Utah Code. Title 53B, Utah System of Higher Education, Chapter 12.

2.2 U.S. Congress, Title IV of the Higher Education Act of 1965, as amended.

2.3 U.S. Department of Education. Code of Federal Regulations, 34 CFR Part 682.401(c).

R765-626-3. General.

3.1 A student who meets eligibility requirements set forth in 34 CFR Part 682.201, but is unable to obtain a subsidized or unsubsidized Federal Stafford Loan from a lender participating in the UHEAA loan program, shall be eligible for a LLR loan if the school the student is attending is:

3.1.1 located in Utah; and

3.1.2 an eligible institution as determined by the U.S. Department of Education.

3.2 Notwithstanding 3.1.1, a Utah resident who attends an out-of-state school shall be eligible for a LLR loan.

3.3 The minimum amount for which UHEAA will authorize a loan guarantee for an LLR loan is $200.

3.4 LLR loans guaranteed by UHEAA shall be originated by the Utah State Board of Regents Loan Purchase Program (LPP).

3.5 For LLR purposes, the LPP shall maintain office hours from 8:00 a.m. to 5:00 p.m., Monday through Friday, except on state and federal holidays.

R765-626-4. Application Procedures.

4.1 To apply for an LLR loan, the student or school shall provide UHEAA with documentation verifying an eligible student has been unable to obtain a subsidized or unsubsidized Federal Stafford Loan for attendance at an eligible school from at least two eligible lenders.

4.2 Upon receipt of documentation described in 4.1, UHEAA shall approve the LLR loans and notify the school of the approval.

4.3 Once the LLR loans have been approved, UHEAA shall send an LLR loan information packet to the student.

4.4 The LLR information packet shall include:

4.4.1 an application and promissory note for an LLR loan with instructions to complete the application form and return it to UHEAA; and

4.4.2 counseling materials which include information relating to the borrower's loan obligation.

4.5 Once UHEAA receives the original, properly completed application and promissory note for an LLR loan, UHEAA shall inform the student as to the final status of the student's application within 60 days of receiving the properly completed form.

R765-626-5. Information Dissemination.

5.1 UHEAA shall disseminate to schools and lenders participating in the UHEAA loan program a copy of the final UHEAA LLR rule and notice of the effective date.

KEY: higher education, student loans*
February 1, 1997 **53B-12-101(6)**
Notice of Continuation April 26, 2005

R850. School and Institutional Trust Lands, Administration.
R850-2. Trust Land Management Objectives.
R850-2-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-204(1) and 53C-1-302 which authorize the Director of the School and Institutional Trust Lands Administration and the Board of Trustees to prescribe the general land management objectives for school and institutional trust lands.

R850-2-200. School and Institutional Trust Land Management Objectives.

The general land management objective for school and institutional trust lands is to optimize and maximize trust land uses for support of the beneficiaries over time. The agency shall:

1. maximize the commercial gain from trust land uses for school and institutional trust lands consistent with long-term support of beneficiaries.

2. manage school and institutional trust lands for their highest and best trust land use.

3. ensure that no less than fair-market value be received for the use, sale or exchange of school and institutional trust lands.

4. reduce risk of loss by reasonable trust land use diversification of school and institutional trust lands.

5. upgrade school and institutional trust land assets where prudent by exchange.

6. permit other land uses or activities not prohibited by law which do not constitute a loss of trust assets or loss of economic opportunity.

KEY: rules and procedures
1991 53C-1-204(1)
Notice of Continuation June 27, 2002 53C-1-302

R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-101. Authority.

(1) The legal authority for these rules and for the Department of Workforce Services to carry out its responsibilities is found in Sections 35A-1-104 and 35A-3-103.

(2) If any applicable federal law or regulation conflicts with these rules, the federal law or regulation is controlling.

R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs, for the collection of overpayments as defined in 35A-3-602(7) and/or disqualifications from any public assistance program provided under a state or federally funded benefit program;

(a) Food Stamps
(b) Family Employment Program (FEP)
(c) Family Employment Program Two Parent (FEPTP)
(d) Refugee Resettlement Program (RRP)
(e) Working Toward Employment (WTE)
(f) General Assistance (GA)
(g) Child Care Assistance (CC)
(h) Emergency Assistance Program (EA)
(i) Adoption Assistance Program (AA)

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above. Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-103. Acronyms.

The following acronyms are used throughout these rules:

(1) "AA" Adoption Assistance Program
(2) "ALJ" Administrative Law Judge
(3) "CC" Child Care Assistance
(4) "CFR" Code of Federal Regulations
(5) "DCFS" Division of Children and Family Services
(6) "DWS" Department of Workforce Services
(7) "EA" Emergency Assistance Program
(8) "FEP" Family Employment Program
(9) "FEPTP" Family Employment Program Two Parent
(10) "GA" General Assistance
(11) "INA" Immigration and Nationality Act
(12) "INS" Immigration and Naturalization Service
(13) "IPV" intentional program violation
(14) "IRCA" Immigration Reform and Control Act
(15) "ORS" Office of Recovery Service, Utah State Department of Human Services
(16) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
(17) "PL" Public Law as enacted the United States Congress
(18) "RRP" Refugee Resettlement Program
(19) "SNB" Standard Needs Budget
(20) "SSA" Social Security Administration
(21) "SSDI" Social Security Disability Insurance
(22) "SSI" Supplemental Security Insurance
(23) "SSN" Social Security Number
(24) "UCA" Utah Code Annotated
(25) "UI" Unemployment Compensation Insurance
(26) "VA" US Department of Veteran Affairs
(27) "WTE" Working Toward Employment Program
(28) "WIA" Workforce Investment Act

R986-100-104. Definitions of Terms Used in These Rules.

In addition to the definitions of terms found in 35A Chapter 3, the following definitions apply to programs listed in R986-100-102:

(1) "Applicant" means any person requesting assistance under any program in Section 102 above.

(2) "Assistance" means "public assistance"

(3) "Certification period" is the period of time for which public assistance is presumptively approved. At the end of the certification period, the client must cooperate with the Department in providing any additional information needed to continue assistance for another certification period. The length of the certification period may vary between clients and programs depending on circumstances.

(4) "Client" means an applicant for, or recipient of, public assistance services or payments, administered by the Department.

(5) "Confidential information" means information that has limited access as provided under the provisions of UCA 63-2-201 or 7 CFR 272.1. The name of a person who has disclosed information about the household without the household's knowledge is confidential and cannot be released. If the person disclosing the information states in writing that his or her name and the information may be disclosed, it is no longer considered confidential.

(6) "Department" means the Department of Workforce Services.

(7) "Education or training" means:

(a) basic remedial education;
(b) adult education;
(c) high school education;
(d) education to obtain the equivalent of a high school diploma;
(e) education to learn English as a second language;
(f) applied technology training;
(g) employment skills training;
(h) on-the-job training; or
(i) post high school education.

(8) "Employment plan" consists of two parts, a participation agreement and an employment plan. Together they constitute a written agreement between the Department and a client that describes the requirements for continued eligibility for financial assistance and the result if an obligation is not fulfilled.

(9) "Executive Director" means the Executive Director of the Department of Workforce Services.

(10) "Financial assistance" or "cash assistance" means payments, other than for food stamps, child care or medical care, to an eligible individual or household under FEP, FEPTP, RRP, GA, or WTE and which is intended to provide for the individual's or household's basic needs.

(11) "Full-time education or training" means education or training attended on a full-time basis as defined by the institution attended.

(12) "Group Home." The Department uses the definition of group home as defined by the state Department of Human Services.

(13) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued. For all programs except Food Stamps and CC, the individuals included in the household assistance unit must be related to each other as described in R986-200- 205.

(14) "Income match" means accessing information about an applicant's or client's income from a source authorized by law. This includes State and Federal sources.

(15) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(16) "Material change" means anything that might affect household eligibility, participation levels or the level of any assistance payment including a change in household composition, eligibility, assets and/or income.

(17) "Minor child" is a child under the age of 18, or under 19 years of age and in school full time and expected to complete

his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(18) "Parent" means all natural, adoptive, and step parents.

(19) "Public assistance" means:

(a) services or benefits provided under UCA 35A Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments provided with the General Fund or under Title IV-E of the Social Security Act;

(d) food stamps; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(20) "Recipient" means any individual receiving assistance under any of the programs listed in Section 102.

(21) "Standard needs budget" is determined by the Department based on a survey of basic living expenses.

R986-100-105. Availability of Program Manuals.

(1) Program manuals for all programs are available for examination or review upon request at each local office. The manuals are also available on the Department's Internet web site. If an interested party cannot obtain a copy from the web site, a copy will be provided by the Department upon request. Reasonable costs of copying may be assessed if more than 10 pages are requested.

(2) For the Food Stamp Program, copies of additional information available to the public, including records, regulations, plans, policy memos, and procedures, are available for examination upon request by members of the public, during office hours, at the Department's administrative offices, as provided in 7 CFR 272.1(d)(1) (1999).

R986-100-106. Residency Requirements.

(1) To be eligible for assistance for any program listed in R986-100-102, a client must be living in Utah voluntarily and not for a temporary purpose. There is no requirement that the client have a fixed place of residence. An individual is not eligible for public assistance in Utah if they are receiving public assistance in another State.

(2) The Department may require that a household live in the area served by the local office in which they apply.

(3) Individuals are not eligible if they are:

(a) in the custody of the criminal justice system;

(b) residents of a facility administered by the criminal justice system;

(c) residents of a nursing home;

(d) hospitalized; or

(e) residents in an institution.

(4) Individuals who reside in a temporary shelter, including shelters for battered women and children, for a limited period of time are eligible for public assistance if they meet the other eligibility requirements.

(5) Residents of a substance abuse or mental health facility may be eligible if they meet all other eligibility requirements. To be eligible for Food Stamps, the substance abuse or mental health facility must be an approved facility. Approval is given by the Department. Approved facilities must notify the Department and give a "change report form" to a client when the client leaves the facility and tell the client to return it to the local office. The change report form serves to notify the Department that the client no longer lives in the approved facility.

(6) Residents of a group home may be eligible for food stamps provided the group home is an approved facility. The state Department of Human Services provides approval for group homes.

R986-100-107. Client Rights.

(1) A client may apply or reapply at any time for any program listed in R986-100-102 by completing and signing an application and turning it in at the local office.

(2) If a client needs help to apply, help will be given by the local office staff.

(3) No individual will be discriminated against because of race, color, national origin, sex, religion or disability.

(4) A client's home will not be entered without permission.

(5) Advance notice will be given if the client must be visited at home outside Department working hours.

(6) A client may request an agency conference to reconcile any dispute which may exist with the Department.

(7) Information about a client obtained by the Department will be safeguarded.

(8) If the client is physically or mentally incapable or has demonstrated an inability to manage funds, the Department may make payment to a protective payee.

R986-100-108. Safeguarding and Release of Information.

(1) All information obtained on specific clients, whether kept in the case file, in the computer system, maintained by the Department, the state, or somewhere else, is safeguarded in accordance with the provisions of Sections 63-2-101 through 63-2-909 and 7 CFR 272.1(c) and 7 CFR 272.8 and PRWORA (1996) Title VIII, Section 837.

(2) General statistical information may be released if it does not identify a specific client. This includes information obtained by the Department from another source. Information obtained from the federal government for purposes of income match can never be released.

R986-100-109. Release of Information to the Client or the Client's Representative.

(1) Information obtained by the Department from any source, which would identify the individual, will not be released without the individual's consent or, if the individual is a minor, the consent of his or her parent or guardian.

(2) A client may request, review and/or be provided with copies of anything in the case record unless it is confidential. This includes any records kept on the computer, in the file, or somewhere else.

(3) Information that may be released to the client may be released to persons other than the client with written permission from the client.

(4) All requests for information must include:

(a) the date the request is made;

(b) the name of the person who will receive the information;

(c) a description of the specific information requested including the time period covered by the request; and

(d) the signature of the client.

(5) The first 10 pages will be copied without cost to the client. If the client requests copies of more than 10 pages, the Department will charge an appropriate fee for the copies in accordance with Department policy which will not be more than the cost to the Department for making copies.

(6) The original case file will only be removed from the office as provided in R986-100-110(6) and cannot be given to the client.

(7) Information that is not released to the client because it is confidential, cannot be used at a hearing or to close, deny or reduce assistance.

(8) Requests for information which is intended to be used for a commercial or political reason will be denied.

R986-100-110. Release of Information Other Than at the Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which

would reveal the client's identity except:

(a) unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or State law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving food stamps can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving food stamps is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act 7 USCA 2011 or any regulation promulgated pursuant to the Act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the request of the Department, are coordinating services and evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, at the request of authorized Department employees, the Department's Information Disclosure Officer, the Department's Quality Control office or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide the following information to the child care provider identified by the client as the provider:

(a) the date on which the CC payment was issued by the Department; and

(b) the amount of the check issued by the Department.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-111. How to Apply For Assistance.

(1) To be eligible for assistance, a client must complete and sign an application for assistance.

(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:

(a) property or other assets owned by all individuals included in the household unit;

(b) insurance owned by any member of the immediate family;

(c) income available to all individuals included in the household unit;

(d) a verified SSN for each household member receiving assistance. If any household member does not have an SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for an SSN is denied for a reason that would not be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;

(e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;

(f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for food stamps or child care; and

(g) a release of information, if requested, which would allow the Department to obtain information from otherwise protected sources when the information requested is necessary

to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-112. Assistance Cannot Be Paid for Periods Prior to Date of Application.

(1) Assistance payments for any program listed in Section 102 above cannot be made for any time period prior to the day on which the application for assistance was received by the Department.

(2) If an application for assistance is received after the first day of the month, and the client is eligible to receive assistance, payment for the first month is prorated from the date of the application.

(3) If additional verifying information is needed to complete an application, it must be provided within 30 days of the date the application was received. If the client is at fault in not providing the information within 30 days, the first day the client can be eligible is the day on which the verification was received by the Department.

(4) If the verification is not received within 60 days of the date the application was received by the Department, a new application is required and assistance payments cannot be made for periods prior to the date the new application is received. (5) If an application for assistance was denied and no appeal taken within 90 days, or a decision unfavorable to the client was rendered on appeal, assistance cannot be claimed, requested, or paid for that time period.

R986-100-113. A Client Must Inform the Department of All Material Changes.

(1) A client must report all material changes which might affect household eligibility to the local office within 10 days of the day the change becomes known. A material change is any change which might affect eligibility and includes:

(a) change in income source, both unearned and earned;

(b) change of more than $25 in gross monthly unearned income for GA, WTE, FEP or FEPTP. For food stamps and child care a change of more than $50 in gross monthly unearned income;

(c) change in employment status including a change from full time to part time or from part time to full time and/or a change in wage rate, salary or income from employment;

(d) change in household size or marital status;

(e) change in residence and resulting change in shelter costs;

(f) gain of a licensed vehicle;

(g) change in available assets including an unlicensed vehicle. Under this paragraph (g), for food stamps a client need only report a change in cash on hand, stocks, bonds, and money in a bank account or savings institution which reach or exceed a total of $2,000;

(h) change in the legal obligation to pay child support; and

(i) for all programs except food stamps, changes of more than $25 in total allowable deductions.

(2) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

R986-100-114. A Client's Continuing Obligation to Provide Verification and Information.

(1) A client who is eligible for assistance must provide additional verification and information, which may affect household eligibility or ongoing eligibility, after the application is approved if requested by the Department.

(2) The client must provide information to determine if eligibility was appropriately established and if payments made under these rules were appropriate. This information may be requested by an employee of the Department or a person authorized to obtain the information under contract with the Department such as an employee of ORS.

R986-100-115. Underpayment Due to an Error on the Part of the Department.

(1) If it is determined that a client was entitled to assistance but, due to an error on the part of the Department, assistance was not paid, the Department will correct its error and make retroactive payment.

(2) If a client receives assistance payments and it is later discovered that due to Department error the assistance payment should have been made at a higher level than the client actually received, retroactive payment will be made to correct the Department's error.

(3) If the client's public assistance was terminated due to the error, the client will be notified and assistance, plus any retroactive payments, will commence immediately.

(4) An underpayment found to have been made within the last 12 calendar months may be corrected and issued to the client. Errors which resulted in an underpayment which were made more than 12 months prior to the date of the discovery of the error are not subject to a retroactive payment.

(5) Retroactive payment under this section cannot be made for any month prior to the date on which the application for assistance was completed.

(6) The client must not have been at fault in the creation of the error.

R986-100-116. Overpayments.

(1) A client is responsible for repaying any overpayment for any program listed in R986-100-102 regardless of who was at fault in creating the overpayment.

(2) Underpayments may be offset against overpayments.

(3) If a change is not reported as required by R986-100-113 it may result in an overpayment.

(4) The Department will collect overpayments for all programs listed in R986-100-102 as provided by federal regulation for food stamps unless otherwise noted in this rule or inconsistent with federal regulations specific to those other programs.

(5) This rule will apply to overpayments determined under contract with the Department of Health.

(6) If an obligor has more than one overpayment account and does not tell the Department which account to credit, the Department will make that determination.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPVs).

(1) Any person who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section 35A-3-602 from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

(a) knowingly making false or misleading statements;

(b) misrepresenting, concealing, or withholding facts or information;

(c) posing as someone else;

(d) not reporting the receipt of a public assistance payment the individual knew or should have known they were not

eligible to receive;

(e) not reporting a material change within 10 days after the change occurs in accordance with these rules; and

(f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in rule, statute or federal regulation.

(4) Disqualifications run concurrently.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that State will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other State count toward determining the length of disqualification in Utah.

(7) The client will be notified that a disqualification period has been determined. The disqualification period begins the month after the disqualification decision has been issued or as soon thereafter as possible and continues in consecutive months until the disqualification period has expired.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-118. Additional Penalty for a Client Who Intentionally Misrepresents Residence.

A person who has been convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence in order to receive assistance simultaneously from two or more states is disqualified from receiving assistance for any and all programs listed in R986-100-102 above, for a period of 10 years. This applies even if Utah was not one of the states involved in the original fraudulent misrepresentation.

R986-100-119. Reporting Possible Child Abuse or Neglect.

When a Department employee has reason to believe that a child has been subjected to abuse or neglect, it shall be reported under the provisions of Section 62A-4a-401 et seq.

R986-100-120. Discrimination Complaints.

(1) Complaints of discrimination can be made in person, by phone, or in writing to the local office, the Office of the Executive Director or the Director's designee, the Department's Equal Opportunity Officer, or the appropriate Federal agency.

(2) Complaints shall be resolved and responded to as quickly as possible.

(3) A record of complaints will be maintained by the local office including the response to the complaint.

(4) If a complaint is made to the local office, a copy of the complaint together with a copy of the written response will be sent to the Office of the Executive Director or the Director's designee.

(5) Discrimination complaints pertaining to the Food Stamp Program will also be sent to the Secretary of Agriculture or the Administrator of Food and Nutrition Service, Washington, D.C., 20250 in accordance with the provisions of 7 CFR 272.6 (1999).

R986-100-121. Agency Conferences.

(1) Agency conferences are used to resolve disputes between the client and Department staff.

(2) Clients or Department staff may request an agency conference at any time to resolve a dispute regarding a denial or reduction of assistance.

(3) Clients may have an authorized representative attend the agency conference.

(4) An agency conference will be attended by the client's employment counselor and the counselor's supervisor unless the client or the supervisor request that the employment counselor not attend the conference.

(5) If an agency conference has previously been held on the same dispute, the Department may decline to hold the requested conference if, in the judgment of the employment counselor's supervisor, it will not result in the resolution of the dispute.

(6) If the Department requests the agency conference and the client fails to respond, attend or otherwise cooperate in this process, documentation in the case file of attempts by the staff to follow these steps will be considered as compliance with the requirement to attempt to resolve the dispute.

(7) An agency conference may be held after a client has made a request for hearing in an effort to resolve the dispute. If so, the client must be notified that failure to participate or failure to resolve the dispute at the agency conference will not affect the client's right to proceed with the hearing.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below, clients will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the client's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify a household member.

(2) Except for overpayments, advance notice is not required when:

(a) the client requests in writing that the case be closed;

(b) the client has been admitted to an institution under governmental administrative supervision;

(c) the client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the client's whereabouts are unknown and mail sent to the client has been returned by the Post Office with no forwarding address;

(e) it has been determined the client is receiving public assistance in another State;

(f) a child in the household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the client was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;

(i) the Department has received factual information confirming the death of a client or payee if there is no other relative able to serve as a new payee;

(j) the client's certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the client has provided information to the Department, or the Department has information obtained from another source, that the client is not eligible or that payment should be

reduced or terminated; or

(m) the Department determines that the client willfully withheld information.

(3) For food stamp recipients and recipients of assistance under R986-300, no action will be taken until 10 days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

(4) Notice is complete if sent to the client's last known address. If notice is sent to the client's last known address and the notice is returned by the Post Office with no forwarding address, the notice will be considered to have been properly served.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) A client has the right to a review of an adverse Department action by requesting a hearing.

(2) In cases where the Department sends notice of its intent to take action to collect an alleged overpayment but there is no alleged overpayment of food stamps, the client must request a hearing in writing or orally within 30 days of the date of notice of agency action. In all other cases, the client must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the client disagrees.

(3) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made at the local office or the Division of Adjudication.

(5) If the client disagrees with the level of food stamp benefits paid or payable, the client can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost food stamp benefits is made within one year of the loss of benefits a client may request a hearing within 90 days of the date of the denial of restoration.

(7) In the case of an overpayment and/or IPV the obligor may contact the presiding officer and attempt to resolve the dispute. If the dispute cannot be resolved, the obligor may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings for all programs listed in R986-100-102 and overpayments and IPVs in Section 35A-3-601 et seq. are declared to be informal.

(4) Hearings are conducted by an ALJ or a Hearing Officer in the Division of Adjudication. A Hearing Officer has all of the same rights, duties, powers and responsibilities as an ALJ under these rules and the terms are interchangeable.

(5) Hearings are usually scheduled as telephone hearings.

(6) If the client prefers an in-person hearing the client must contact the ALJ assigned to hear the case in advance of the hearing and request that the hearing be converted to an in-person hearing. An in-person hearing is conducted in one of the following ways, at the option of the client:

(a) the client can request that the hearing be conducted in the office of the ALJ and appear personally before the ALJ, but the Department representative and Department witnesses will be allowed to participate by telephone; or

(b) the client can participate from the local Employment Center with the witnesses and Department employees who work in that particular Employment Center. The ALJ and any Department employees or witnesses who are in another location will participate from that location or locations by telephone.

(7) the Department is not responsible for any travel costs incurred by the client in attending an in-person hearing.

(8) the Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R986-100-125. When a Client Needs an Interpreter at the Hearing.

(1) If a client notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the client.

(2) If an interpreter is needed at the hearing by a client or the client's witness(es), the client may arrange for an interpreter to be present at the hearing who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Division of Adjudication at the time the appeal is filed that assistance is required in arranging for an interpreter.

R986-100-126. Procedure For Use of an Interpreter.

(1) The ALJ will be assured that the interpreter:

(a) understands the English language; and

(b) understands the language of the client or witness for whom the interpreter will interpret.

(2) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(3) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

(4) The interpreter will be instructed to translate to the client the explanation of the hearing procedures as provided by the ALJ.

R986-100-127. Notice of Hearing.

(1) All interested parties will be notified by mail at least 10 days prior to the hearing.

(2) Advance written notice of the hearing can be waived if the client and Department agree.

(3) The notice shall contain:

(a) the time, date, and place, or conditions of the hearing. If the hearing is to be by telephone, the notice will provide the number for the client to call and a notice that the client can call the number collect;

(b) the legal issues or reason for the hearing;

(c) the consequences of not appearing;

(d) the procedures and limitations for requesting rescheduling; and

(e) notification that the client can examine the case file prior to the hearing.

(4) If a client has designated a person or professional organization as the client's agent, notice of the hearing will be sent to that agent. It will be considered that the client has been given notice when notice is sent to the agent.

(5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and the client agree, after a full verbal explanation of the issues and potential results.

(6) The client must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.

(7) The notice of hearing will be translated, either in writing or verbally, for certain clients participating in the RRP program in accordance with RRP regulations.

R986-100-128. Hearing Procedure.

(1) Hearings are not open to the public.

(2) A client may be represented at the hearing. The client may also invite friends or relatives to attend as space permits.

(3) Representatives from the Department or other state agencies may be present.

(4) All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded.

(5) All issues relevant to the appeal will be considered and decided upon.

(6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an appeal will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless the client requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the client requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied with within 10 days of the issuance of the decision.

R986-100-129. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R986-100-130. Default Order for Failure to Participate.

(1) The Department will issue a default order if an obligor in an overpayment and/or IPV case fails to participate in the administrative process. Participation for an obligor means:

(a) signing and returning to the Department an approved stipulation for repayment and making all of the payments as agreed,

(b) requesting and participating in a hearing, or

(c) paying the overpayment in full.

(2) If a hearing has been scheduled at the request of a client or an obligor and the client or obligor fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, issue a default order.

(3) A default order will be based on the record and best evidence available at the time of the order.

R986-100-131. Setting Aside A Default and/or Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by authorized representative as defined in R986-100-130 may request that the default order be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order within ten days of the issuance of the default. If the request is made after the expiration of the ten day time limit, the party requesting reopening must show good cause for not making the request within ten days.

(3) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may grant or deny the request on the basis of the record in the case.

(4) If a presiding officer issued the default, the officer shall issue a decision either granting or denying the request. If the request is granted the obligor will be given 10 days in which to enter into a stipulation and repayment agreement. If the obligor does not sign the stipulation within 10 days, the matter will be set for a hearing on the merits.

(5) The ALJ or presiding officer may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness.

(6) If a request to set aside the default or a request for reopening is not granted, the ALJ or presiding officer will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default by following the procedure in R986-100-135. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case. If the default is set aside on appeal, the Executive Director or designee will remand the case to an ALJ for a hearing on the merits.

R986-100-132. What Constitutes Grounds to Set Aside a Default.

(1) A request to reopen or set aside for failure to participate:

(a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening,

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening,

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening,

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Because they are required to know and understand Department rules, attorneys and professional representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties arguments or statements, setting aside the default and taking additional evidence might effect the outcome of the case.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R986-100-133. Canceling an Appeal and Hearing.

When a client notifies the Division of Adjudication or the ALJ that the client wants to cancel the hearing and not proceed with the appeal, a decision dismissing the appeal will be issued. This decision will have the effect of upholding the Department decision. The client will have 30 days in which to reinstate the appeal by filing a written request for reinstatement with the Division of Adjudication.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate food stamps, RRP, FEPTP, or FEP financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the delay in filing was due to circumstances beyond the client's control or for circumstances which were compelling and reasonable. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

(3) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(4) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

(5) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

(6) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(7) Financial assistance payments under GA or WTE, and CC subsidies will not continue during the hearing process regardless of when the appeal is filed.

(8) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(9) Clients receiving financial assistance under the FEPTP program must continue to participate to receive financial assistance during the hearing process.

(10) Financial assistance under the FEPTP program will not extend for longer than the seven-month time limit for that program under any circumstance.

(11) Assistance is not allowed pending a hearing from a denial of an application for assistance.

R986-100-135. Further Appeal From the Decision of the ALJ or Presiding Officer.

Either party has the option of appealing the decision of the ALJ or presiding officer to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ or presiding officer.

KEY: employment support procedures
April 7, 2005 **35A-3-101 et seq.**
35A-3-301 et seq.
35A-3-401 et seq.

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children age 13 to 18 years if the child is:

(i) physically or mentally incapable of self-care as determined by a medical doctor, doctor of osteopathy or licensed or certified psychologist; and/or

(ii) under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" means a child identified by the Department of Human Services, Division of Services to People with Disabilities or other entity as determined by the Department, as having a physical or mental disability requiring special child care services.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) Neither the Department nor the state of Utah are liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(10) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(11) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the re-certification forms are signed and returned to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(9) The Department may also release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) information contained on the Form 980;

(c) the date the child care subsidy was issued;

(d) the subsidy amount for that provider;

(e) the subsidy deduction amount;

(f) the date a two party check was mailed to the client; and

(g) a copy of the two party check on a need to know basis.

(10) If child care funds are issued on the Horizon Card

(electronic benefit transfer) unused child care funds will be removed from the Horizon Card 60 days after the last child care transaction/transfer occurred ("aged off") and will no longer be available to the client.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to the client and/or the child. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand, great, great-great, or great-great-great or persons who meet any of the above relationships even if the marriage has been terminated.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) If a new client has a provider who is providing child care at the time the client applies for child care assistance or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive child care assistance for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(3) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care; or

(d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or

(4) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(5) If an exception is granted under paragraph (4) or (5) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(6) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;

(b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;

(d) there are no individuals residing in the home who have a conviction for a misdemeanor which is an offense against a person, or any felony conviction, or have been subject to a supported finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required by the Utah Immunization Act and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(7) The following providers are not eligible for receipt of a CC payment:

(a) a member of household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state; and

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the State of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records.

(4) The provider is entitled to know the date on which payment for CC was made to the parent and the amount of the payment.

(5) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider. A provider cannot require that a client give the provider the client's Horizon card and/or the client's PIN or otherwise obtain the card and/or PIN.

(6) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(7) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received. Provider case records will be maintained according to Office of Licensing standards.

R986-700-707. Subsidy Deduction.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent must pay the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

R986-700-708. FEP, and Diversion CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment.

(4) If the client is working a minimum of 15 hours per week and meets all employment support criteria in the three months immediately following the period covered by the diversion payment or if the client's FEP or FEPTP assistance was terminated as "transitional", the client is not subject to a subsidy deduction until the fourth month after the period covered by the diversion payment. A new application is not required during this transitional period.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100 percent disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. If the prevailing community standard is below minimum wage, the employed parent client must make at least the prevailing community standard. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage or, if the prevailing community standard is below minimum wage, the parent must establish that he or she is likely to make at least the prevailing community standard. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) The stipend received by Americorps*Vista volunteers meets the prevailing community standard test for this section even though the stipend is not counted as income. The activities of Americorps*Vista volunteers are considered to be work and not training. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) If a parent was receiving FEP or FEPTP, and their financial assistance was terminated due to increased income, and the parent is otherwise eligible for ES CC, the subsidy deduction will not be taken for the two months immediately following the termination of FEP or FEPTP, provided the client works a minimum of 15 hours per week. The third month following termination of FEP or FEPTP CC is subject to the subsidy deduction.

(7) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a Social Security Number if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives in the household must be counted. The income of some household members in multi-generational households is counted in full instead of being deemed as in FEP or FEPTP;

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted; and

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony

paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24 month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24 month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24 month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

(9) In a two-parent family receiving CC for education or training activities, the monthly CC subsidy cannot exceed the established monthly local market rates.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship, income, and asset eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

R986-700-713. Amount of CC Payment.

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed $100 more than the maximum monthly local market rate for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of $125 can be made on the Horizon card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the

original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

(3) If the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All child care overpayments must be repaid to the Department. Overpayments may be deducted from ongoing child care payments for clients who are receiving child care. If the Department is a fault in the creation of an overpayment, the Department will deduct $10 from each month's child care payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled. For example: A client enrolled for 10 hours of classes each week may not receive more than 10 hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

(6) On a case-by-case basis, the Department may fund child care for children with disabilities at a higher rate if the needs of the child and provider necessitate. To qualify for the higher rate DSPD or another Department approved entity must first determine that the child care provider has additional ongoing costs in caring for the child. The Department may set different income eligibility criteria for clients with children determined to need consideration under this paragraph. The income eligibility rate is available at all Employment Centers.

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