R23. Administrative Services, Facilities Construction and Management.
R23-4. Suspension/Debarment.
R23-4-1. Purpose and Authority.

(1) This rule sets forth the the basis and guidelines for suspension or debarment from consideration for award of contracts by the division.

(2) This rule is authorized under Subsection 63A-5-103(1), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management, and Subsection 63G-6-208(2), which authorizes the Building Board to make rules regarding the procurement of construction, architect-engineering services, and leases.

R23-4-2. Definitions.

(1) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.

(2) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(3) "Person" shall have the meaning provided in Section 63G-6-103.

R23-4-3. Suspended and Debarred Persons Not Eligible for Consideration of Award.

No person who has been suspended or debarred by the division, will be allowed to bid or otherwise solicit work on division contracts until they have successfully completed the suspension or debarment period.

R23-4-4. Causes for Suspension/Debarment and Procedure.

(1)(a) The causes for debarment and procedures for suspension/debarment are found in Sections 63G-6-804 through 63G-6-806, as well as Section 63A-5-208(8).

(b) Pursuant to subsection 63G-6-804(2)(e), a pattern and practice by a state contractor to not properly pay its subcontractors may be determined by the Director to be so serious and compelling as to affect responsibility as a state contractor and therefore may be a cause for debarment.

(c) A pattern and practice by a subcontractor to not honor its bids or proposals may be a cause for debarment.

(2) The procedures for suspension/debarment are as follows:

(a) The director, after consultation with the using agency and the Attorney General, may suspend a person from consideration for award of contracts for a period not to exceed three months if there is probable cause to believe that the person has engaged in any activity which may lead to debarment. If an indictment has been issued for an offense which would be a cause for debarment, the suspension, at the request of the Attorney General, shall remain in effect until after the trial of the suspended person.

(b) The person involved in the suspension and possible debarment shall be given written notice of the division's intention to initiate a debarment proceeding. The using agency and the Attorney General will be consulted by the director and may attend any hearing.

(c) The person involved in the suspension and debarment will be provided the opportunity for a hearing where he may present relevant evidence and testimony. The director may establish a reasonable time limit for the hearing.

(d) The director, following the hearing on suspension and debarment shall promptly issue a written decision, if it is not settled by written agreement.

(e) The written decision shall state the specific reasons for the action taken, inform the person of his right to judicial or administrative review, and shall be mailed or delivered to the suspended or debarred person.

(f) The debarment shall be for a period as set by the Director, but shall not exceed three years.

(g) Notwithstanding any part of this rule, the Director may appoint a person or person(s) to review the issues regarding the suspension or debarment as a recommending authority to the Director.

KEY: contracts, construction, construction disputes
March 15, 2005 63A-5-103 et seq.
Notice of Continuation September 7, 2017 63G-6-103
63G-6-804

R23. Administrative Services, Facilities Construction and Management.
R23-5. Contingency Funds.
R23-5-1. Purpose.

(1) This rule establishes policies and procedures regarding contingency funds held by the Division.

(2) It provides guidelines for the source, use and reporting of contingency funds as provided in Title 63A, Chapter 5.

R23-5-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

R23-5-3. Definitions.

(1) "Appropriated Funds" means funds appropriated to the Division for capital projects to be administered by the Division. This includes state funds such as the General Fund as well as proceeds from state General Obligation Bonds.

(2) "Board" means the State Building Board established under Title 63A, Chapter 5, Part 1.

(3) "Division" means the Division of Facilities Construction and Management established under Title 63A, Chapter 5, Part 2.

(4) "Non-appropriated Funds" means any funds which are provided for a project which are not Appropriated Funds.

(5) "Project Reserve" means the account provided for in Subsection 63A-5-209(2).

(6) "Statewide Contingency Reserve" means the account provided for in Subsection 63A-5-209(1)(c).

R23-5-4. Applicability.

(1) The provisions of this rule shall apply to all projects or portions of projects funded through Appropriated Funds.

(2) The provisions of this rule may by waived to the extent necessary in order to comply with specific requirements associated with the project funds such as specific legislative direction or requirements associated with state revenue bonds.

R23-5-5. General Provisions.

(1) The balances in the Statewide Contingency Reserve and the Project Reserve may be redirected to other purposes by the Legislature.

(2) New projects may not be initiated from the Statewide Contingency Reserve nor from the Project Reserve unless authorized by the Legislature. This prohibition does not apply to remedial work associated with previously authorized and completed projects.

(3) The Division may utilize any number of subaccounts required to maintain separate accounting of Appropriated Funds as required by the source of the funds.

R23-5-6. Funding of Statewide Contingency Reserve.

(1) All Appropriated Funds budgeted for contingencies shall be transferred to the Statewide Contingency Reserve upon their receipt by the Division. This includes budget elements previously referred to as "design contingency" and "project contingency."

(2) The Division shall budget for contingencies based upon a sliding scale percentage of the construction cost.

(a) For new construction, the sliding scale shall range from 4-1/2% to 6-1/2%.

(b) For remodeling projects, the sliding scale shall range from 6% to 9-1/2%.

(c) The sliding scale shall be approved by the Board and kept on file by the Division.

(d) When projects are funded from both Appropriated Funds and Non-appropriated Funds, the amount budgeted for contingencies shall be prorated so that only that portion associated with the Appropriated Funds' share of the project is transferred to the Statewide Contingency Reserve.

(e) Any remaining balance as of July 1, 1993 of Appropriated Funds budgeted for contingencies shall be transferred to the Statewide Contingency Reserve as provided in this rule.

R23-5-7. Use of Statewide Contingency Reserve.

(1) The Statewide Contingency Reserve may provide additional funding to a project when:

(a) necessary construction costs arise on projects after the construction has been bid;

(b) costs for other elements of a project exceed the amount budgeted; or

(c) necessary costs arise which were not budgeted for.

(2) As previously directed by the Legislature, unbudgeted costs included in Subsection R23-5-6(1)(c) may include legal services, insurance, surveys, testing and inspection, and bidding costs.

(3) The Statewide Contingency Reserve may be used to fund changes in scope only if the scope change is necessary for the proper functioning of the program that was provided for in the approved project scope. The Division shall take steps as necessary to minimize the utilization of the Statewide Contingency Reserve for scope changes.

(4) With the prior approval of the Board, the Statewide Contingency Reserve may be used to fund unanticipated costs on projects funded through Non-appropriated Funds.

R23-5-8. Funding of Project Reserve.

(1) After all major construction contracts for a project have been awarded, and after setting aside adequate reserves for any remaining construction work which was not included in the construction contracts, any remaining balance of Appropriated Funds in the construction budget shall be transferred to the Project Reserve.

(2) Upon completion of the project, any residual balance of Appropriated Funds in any budget category shall be transferred to the Project Reserve; however, if the residual balance is the result of a reduction in a contract balance which had previously been funded from the Statewide Contingency Reserve, the residual balance shall be transferred instead to the Statewide Contingency Reserve.

R23-5-9. Use of Project Reserve.

The Division may utilize the Project Reserve only for the award of construction contracts which exceed the available construction budget. This may only be done after a review of other options to bring the cost within available funding and a determination that this action is necessary in order to meet the intent of the project.

R23-5-10. Reporting Requirements.

(1) The five-year building plan published annually by the Board shall include a summary report on the Statewide Contingency Reserve and the Project Reserve. This report shall include information on each Reserve summarized as follows for the most recently completed fiscal year:

(a) beginning balance;

(b) increases and decreases by type; and

(c) ending balance.

(2) At least annually, the Division shall analyze the balance in each Reserve and the projected needs based on already approved projects and determine if the balance is in excess of or less than the projected need. The results of this analysis shall be reported to the Legislature in its regular session.

(3) The Division shall report regularly to the Board on the

status of the Statewide Contingency Reserve and the Project Reserve.

KEY: buildings, contingency fund*
1994 63A-5-209 et seq.
Notice of Continuation September 7, 2017

R23. Administrative Services, Facilities Construction and Management.
R23-6. Value Engineering and Life Cycle Costing of State Owned Facilities Rules and Regulations.
R23-6-1. Purpose.

These rules implement Subsection 63A-5-103(1)(f) and 63A-5-206(8).

It is the purpose of these rules to ensure that the state owned facilities shall be life cycle cost effective. To achieve this objective, Value Engineering and Life Cycle Cost Analysis is to be used in the facility design process by the Division of Facilities Construction and Management.

R23-6-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

R23-6-3. Definitions.

(1) Division: The Division of Facilities Construction and Management.

(2) Director: Director of the Division or designee

(3) GSF: Gross Square Feet

(4) Value Engineering: A structured methodology that analyzes functional requirements, identifies alternatives to perform these functions and evaluates the alternatives using Life Cycle Costing techniques.

R23-6-4. Scope.

To the extent appropriated by the legislature, Value Engineering will be applied to achieve cost effective design solutions and informed decision making by the Division, for the following activities:

TABLE

A.	PROGRAMMING	
1.	Site Selection	as feasible
2.	Existing Facilities	Over 30,000 GSF
3.	Energy Conservation	Always
4.	New Facilities	Over 30,000 GSF
B.	DESIGN FOR CONSTRUCTION	
1.	New Construction	Over 30,000 GSF
2.	Renovation	Over 30,000 GSF
3.	Energy Conservation	Always

Only facilities which fall below these area requirements will be automatically exempted. Other projects may be subjected to Life Cycle Cost Analysis at the discretion of the Director.

R23-6-5. Special Exemption Procedures.

Upon written request by the Director, the Building Board may issue a special exemption for a facility from meeting the Life Cycle Costing requirements of these rules. The Director's special exemption request shall include a full justification.

After reviewing the special exemption request, the Building Board will approve or disapprove the Director's request. Board approval shall be based on the findings that the public interest is best served by approval of the exemption.

R23-6-6. Methodology.

One or more methods of economic evaluation may be used as appropriate to assess the Life Cycle Cost effectiveness for each of the activities identified in Section R23-6-4. Methods may include, but are not limited to:

(1) Standard practice for measuring Total Life Cycle Cost of building systems. American Society for Testing and Materials (ASTM designation E917-93).

(2) Recommended practice for measuring Net Present Value and Internal Rates of Return for Investments in buildings and building systems. National Institute of Standards and Technology (NBSIR 83-2657).

(3) Recommended practice for measuring Simple and Discounted Payback for Investments in buildings and building systems. National Institute of Standards and Technology (NBSIR 84-2850).

(4) Standard practice for measuring Benefit to Cost and Savings to Investment Ratios for buildings and building systems. American Society for Testing Materials (ASTM E964-93).

R23-6-7. Application.

(1) The Division will issue Life Cycle Cost Guidelines for use by Fee Architect/Engineers and Consultants which will include:

(a) Rules;

(b) Basis for the calculation of Total Life Cycle Costing;

(c) Guidance on sources of data for calculation;

(d) Requirements for Life Cycle Cost analysis.

(2) The Division will issue specific instructions at the outset of each project describing the extent of Value Engineering or Life Cycle Cost analysis required for the project.

(3) The Division will use an independent Value Engineering Program to review the fee Architect/Engineer's design and use Value Engineering techniques to assist in identifying alternative viable design options to be subject to Life Cycle Cost analysis.

R23-6-8. Responsibilities.

(1) The Division shall:

(a) Manage and monitor the implementation of the Value Engineering and Life Cycle Costing program.

(b) Recommend budgets to the legislature to:

(i) Fund Value Engineering and Life Cycle Costing analysis for programming activity.

(ii) Fund Value Engineering and Life Cycle Costing analysis for Design and Construction Activity.

(c) Select suitably trained and qualified persons to conduct the Value Engineering and Life Cycle Costing Analysis program.

(d) Develop methods for evaluating, selecting, and implementing preferred alternatives from the output of the Value Engineering and Life Cycle Costing program.

KEY: construction costs, public buildings*
1995 63A-5-103 et seq.
Notice of Continuation September 7, 2017

R23. Administrative Services, Facilities Construction and Management.
R23-9. Cooperation with Local Government Planning.
R23-9-1. Purpose and Authority.

(1) This rule provides for cooperation with local government planning efforts when siting, designing, and constructing facilities on state property.

(2) This rule is authorized under Section 63A-5-103 which directs the Building Board to make rules necessary for the discharge of its duties and those of the division.

(3) The statutory provisions that set forth the relationship between the planning and zoning authority of local governments and the construction of facilities on state property are contained in Section 63A-5-206.

R23-9-2. Definitions.

(1) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.

(2) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(3) "Local government" means a "municipality" as defined in Section 10-9-103 or a "county" as defined in Section 17-27-103.

(4) "State property" means land owned by the State of Utah and any department, division, agency, institution, commission, board, or other administrative unit of the State of Utah; including but not limited to, the division, the State Building Ownership Authority, and state institutions of higher education.

R23-9-3. Exemption from Local Government Planning and Zoning Authority.

(1) As provided for in Section 63A-5-206, Section 10-9-105, and Section 17-27-104.5, construction on state property is not subject to the planning and zoning authority of local governments regardless of what entity will own or occupy the resulting facility. Construction on state property is not subject to local government building permit requirements, or plan reviews.

(2) This exemption does not apply to the business regulation authority of local governments except as follows.

(a) Any requirement to comply with the local government's planning or zoning ordinance in order to receive a business license or similar business permit shall be deemed to have been met through the division's determination of siting and design requirements.

(b) As otherwise provided by law.

R23-9-4. Consideration of Local Government Planning.

(1) When determining the location and design of facilities to be constructed on state property, the division shall consider input received from local governments and, as appropriate, local government planning and zoning requirements that would apply if the property were not owned by the state. This may include discussions with local government planning officials and/or a review of some or all of the following local government documents:

(a) master plan;

(b) zoning ordinance; and

(c) requirements for ingress, egress, parking, landscaping, fencing, buffering, traffic circulation, and pedestrian circulation.

(2) In any dispute regarding departures from local government requirements, the final determination shall be made by the director.

R23-9-5. Additional Requirements for Secured Facilities.

In addition to the requirements of this rule, the director shall comply with the requirements of Subsection 63A-5-206(12) regarding notice and hearings for projects involving diagnostic, treatment, parole, probation, or other secured facilities.

KEY: construction, planning, zoning
March 24, 2003 63A-5-103
Notice of Continuation September 7, 2017

R23. Administrative Services, Facilities Construction and Management.
R23-10. Naming of State Buildings.
R23-10-1. Purpose.

This rule defines which entities have the authority to name state buildings.

R23-10-2. Authority.

This rule is authorized under Subsection 63A-5-103(2), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management (hereinafter referred to as the Division).

R23-10-3. Policy.

It is the policy of the Utah State Building Board that the governmental entity that holds legal title to a given facility has the authority to determine an appropriate name for that facility, if the facility is of a significant size or function and the entity deems the naming of the facility to be appropriate. Specifically, the Building Board will have responsibility for naming those buildings for which title is held by the Division or the State Building Ownership Authority. The State Board of Regents will govern the naming of buildings in the Utah System of Higher Education.

R23-10-4. Naming of Buildings Under the Authority of the Building Board.

Buildings for which the Building Board has responsibility for naming as provided for in Section R23-10-3 shall be addressed as follows.

(1) Descriptive names, such as those identifying functions housed in the building or names based on geographic location, may be determined by the entity occupying the building. For buildings that house more than one agency, the Division shall be responsible for determining the building's name. Any concerns with names under this subsection (1) shall be raised with the Building Board for final resolution.

(2) Honorary names must be approved by the Building Board. Prior to consideration by the Building Board, information shall be provided demonstrating the appropriateness of the naming request. This may include information about the individual to be honored, the desires of the individual's family, and the basis for honoring the individual by naming the specific building.

R23-10-5. Legislative Actions to Name a Building.

Any legislative action to name a building supersedes the provisions of this rule.

KEY: buildings, naming process
February 4, 2003 63A-5-103 et seq.
Notice of Continuation September 7, 2017

R23. Administrative Services, Facilities Construction and Management.
R23-12. Building Code Appeals Process.
R23-12-1. Purpose and Authority.

(1) In accordance with Section 15A-1-207, this rule establishes procedures for the appeal of decisions made by the Building Official in regard to the application and interpretation of building codes.

(2) The statutory provisions governing the application and enforcement of building codes with state facilities are contained in Title 15A and in Section 63A-5-206.

(3) The State Building Board's authority to adopt rules for the Division are contained in Subsection 63A-5-103(2)(a).

R23-12-2. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63A-5-206.

(2) The following additional terms are defined for this rule.

(a) "Appeals Board" means Appeals Board convened by the Director pursuant to Section R23-12-4.

(b) "Building Code" has the same meaning as "code" as defined in Section 15A-1-202.

(c) "Building Official" means the person designated by the Director or the Delegated Agency as the case may be to be responsible for the enforcement of building codes.

(d) "Day" means calendar day.

(e) "Delegated Agency" means a state entity to which the State Building Board has delegated the responsibility of administering the construction of facilities on state property when the delegated responsibility includes the role of Compliance Agency.

(f) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

(g) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(h) "State Agency" means the State of Utah and any department, commission, board, council, agency, institution, officer, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the State of Utah.

(i) "State Project" means the construction of a Facility on property owned by a State Agency.

R23-12-3. Applicability.

(1) The appeal of decisions of the Building Official for State Projects administered by the Division or a Delegated Agency shall be conducted in accordance with this rule.

(2) Other entities authorized by Subsection 63A-5-206(6) to act as Compliance Agency for a State Project are responsible for providing an appeals process. The appeals process provided for in this rule shall apply if the entity does not provide an appeals process or it fails to hear an appeal duly filed with that entity.

R23-12-4. Designation of Appeals Board.

(1) The Director shall identify a pool of individuals who are knowledgeable of various aspects of the buildings codes and who are willing to serve on the Appeals Board when requested.

(2) When an appeal is duly filed with the Director, the Director shall appoint either three or five individuals, depending on the nature of the appeal, to act as the Appeals Board for that specific appeal. In selecting the members of the Appeals Board, the Director shall consider the portions of the building code that are in dispute.

(3) Each member or the Appeals Board shall certify that he or she does not have a conflict of interest in regards to the matter being heard.

(4) The Director shall designate one of the members to act as presiding officer of the Appeals Board.

(5) The Division shall provide administrative support to the Appeals Board and shall maintain a record of matters submitted to the Appeals Board and the resolution thereof.

R23-12-5. Authority of Appeals Board.

(1) The Appeals Board shall resolve disputes regarding the application or interpretation of the building code as it relates to a specific State Project.

(2) The Appeals Board shall not have the authority to waive requirements of the building codes or to interpret the administrative provisions of the building codes.

(3) Decisions of the Appeals Board shall be by majority vote.

(4) Decisions of the Appeals Board are final.

R23-12-6. Initial Actions for Decisions Prior to Construction.

(1) If the issue being appealed arises prior to its construction, the architect, engineer or contractor, as the case may be, shall submit a written request for interpretation to the Building Official which shall include:

(a) the basis for the requestor's interpretation of the code, and

(b) other decisions related to the application of the code that have an impact on the interpretation in question.

(2) Within 21 days of receipt of the written request, the Building Official shall provide a written decision. If the Building Official does not agree with the requested interpretation, the decision shall include the basis for the Building Official's interpretation of the code.

R23-12-7. Initial Actions for Inspection Exceptions during Construction.

(1) If the issue being appealed is an inspection exception regarding work constructed, the contractor shall, within 10 days of receiving the inspection report, submit a request in writing to the Building Official for reconsideration of the inspector's exception.

(2) Within 10 days of receipt of the written request, the Building Official shall provide a written decision either reaffirming the inspector's findings or stating how the inspector's exception is modified.

R23-12-8. Appeal of Delegated Agency's Decision.

For State Projects administered by a Delegated Agency, the following procedure shall be followed before an appeal may be heard by the Appeals Board.

(1) Within 10 days of receipt of the decision of the Building Official representing the Delegated Agency, the entity requesting the appeal shall submit the following to the Division's Building Official:

(a) a copy of the documentation required by Section R23-12-6 or R23-12-7, and

(b) a written statement explaining the basis for the appeal.

(2) Within 10 days of receipt of the appeal, the Division's Building Official shall provide a written decision either reaffirming the Delegated Agency's findings or stating how the Delegated Agency's findings are modified.

R23-12-9. Filing of Appeal and Appeals Board Action.

(1) Within 21 days of receipt of the written decision provided for in Section R23-12-6, R23-12-7, or R23-12-8, the entity appealing the decision shall submit the following documents to the Director:

(a) a letter stating that the entity is appealing a decision regarding the building code including an explanation of the basis for the appeal;

(b) a copy of the documentation required by Sections R23-

12-6, R23-12-7 and R23-12-8 as applicable;

(c) other information supporting the appeal.

(2) If the Building Official did not provide a written decision, the entity shall submit an affidavit to this effect in lieu of the written decision.

(3) The Director shall convene an Appeals Board within 21 days after an appeal is duly filed.

(4) Both the entity appealing the decision and the Building Official shall be given an opportunity to present their position.

(5) A written decision of the Appeals Board shall be issued within 7 days after the appeal is heard.

R23-12-10. Time Extensions.

Upon a showing of good cause, the time periods provided for in this rule may be extended by the Director prior to the convening of the Appeals Board or by the presiding officer upon or after the convening of the Appeals Board.

R23-12-11. Forms.

The Division may establish forms to be used in the filing of an appeal.

R23-12-12. Costs of Appeal.

Each party is responsible for its own costs in the appeal process except that the Division may assess the party that loses the appeal for any costs incurred by the Appeals Board in evaluating the appeal.

KEY: appeals, building codes, construction
October 10, 2002 15A-1-207
Notice of Continuation September 7, 2017 63A-5-206

R23. Administrative Services, Facilities Construction and Management.
R23-14. Management of Roofs on State Buildings.
R23-14-1. Purpose and Authority.

(1) This rule provides for the management of roofs on state buildings to prevent damage to the roof and to improve security of state buildings.

(2) This rule is authorized under Section 63A-5-103 which directs the Building Board to make rules necessary for the discharge of its duties and those of the division.

R23-14-2. Definitions.

(1)(a) "Agency" means each department, agency, institution, commission, board, or other administrative unit of the State of Utah.

(b) "Agency" does not mean the State Capitol Preservation Board.

(2) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.

(3) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(4) "Employee" means a person employed by the division or a responsible agency.

(5)(a) "Responsible agency" means the agency responsible for managing a state building.

(b) "Responsible agency" does not mean the division.

(6) "State building" means a building owned by an agency.

R23-14-3. Buildings Managed by the Division.

(1) The division shall maintain control of and restrict access to the roof of buildings managed by the division. The division shall allow access only to duly authorized persons as provided in this section.

(2) The division shall maintain a register of all persons granted ongoing or limited access to the roofs it manages. This shall include a list of division employees that are granted ongoing access.

(3) The register required under Subsection (2) as well as a file of the completed roof access application/agreement forms shall be retained for a period of not less than three years.

(4) In order to obtain access, a person, who is not an employee of the division, must complete and execute a roof access application/agreement form.

(5) The roof access application/agreement form shall include:

(a) the name of the person granted access, the period of time for which access is granted, the reason for the access, and any restrictions on the access;

(b) an agreement from the person granted access to accept responsibility for and pay for the repair of any damage resulting from that person's access;

(c) an agreement to hold the agency and the State of Utah harmless from any liability or claim resulting from the person's access;

(d) a statement by the person requesting access that he has obtained adequate fall protection training as appropriate for the roof to be accessed and the activity to be performed thereon;

(e) the signature of the person requesting access; and

(f) the signature of the person granting access.

(6) Any person accessing a roof must have fall protection equipment as required by any applicable authority.

(7) The access limitations of this rule may be modified or reduced in order to provide access to roofs or portions of roofs that are designed and constructed for such access.

R23-14-4. Buildings Managed by Responsible Agencies.

(1) Responsible agencies shall adopt and implement policies and procedures at least as stringent as those contained in Section R23-14-3 to provide for the control of and restricted access to roofs of buildings managed by the responsible agency.

(2) The responsible agency shall develop its own means of documenting those granted access and shall identify person(s) authorized to grant access to roofs.

(3) In applying the requirements of subsection R23-14-4(1), references to employees of the division in Section R23-14-3 shall mean employees of the responsible agency.

(4) Employees of the division shall have access to these roofs after checking in with the responsible agency. The responsible agency will not need to document access by employees of the division.

R23-14-5. Access to Capital Improvement Funds for Roofing Repairs.

(1) The division may refuse to use capital improvement funds appropriated to the division for the repair of roof damage if the responsible agency fails to implement or comply with the policies and procedures required by Section R23-14-4.

(2) The division may require a review of roof access records prior to accepting financial responsibility for the cost of repairing damage to a roof.

KEY: public buildings, security, roofs
December 24, 2012 63A-5-103
Notice of Continuation September 7, 2017

R23. Administrative Services, Facilities Construction and Management.
R23-21. Division of Facilities Construction and Management Lease Procedures.
R23-21-1. Purpose and Authority.

(1) As provided in Subsection 63G-6-208(2), this rule establishes procedures for the procurement of leasing of real property.

(2) The Building Board's authority to adopt rules for the activities of the Division is set forth in Subsection 63A-5-103(1)(e).

(3) The statutory provisions governing the procurement of leasing of real property by the Division are contained in Title 63G, Chapter 6; Title 63A, Chapter 5; and Title 4, Chapter 1.

R23-21-2. New Leases.

A. Agency Request and Justification

An agency requesting leased space must submit a request and justification statement to the Division of Facilities Construction and Management (DFCM) preferably at least six months before the required date of occupancy. A space utilization program should be prepared by the agency. Assistance is available, if needed, from the staff of the DFCM. The staff of DFCM, along with the agency, will review the program and criteria for the space requested.

The justification statement should include the following:

Planned agency use
Present agency location
Proposed area or location of new lease
Any options that should be considered
Lease term
Present lease rate and what services are included
Present square footage
Requested square footage

B. Securing Space

If a new lease is required, an advertisement will be prepared by DFCM and competitive proposals will be solicited to comply with the State Procurement Code. Proposals will be reviewed jointly by the DFCM staff and the agency.

The review will include compliance to codes that are required by state and federal laws.

C. Negotiations

DFCM will negotiate, or may allow the agency to participate in the negotiations, so that space can be leased in the best interest of the agency and the state.

D. Lease Agreements

A standard lease agreement has been prepared for use by DFCM. An approved alternate may be used. The lessor, agency, and staff of DFCM should be involved in the preparation of the final written lease agreement.

E. Lease Approval and Processing

The lease will be distributed for approval signatures of the Lessor, the Agency Budget Officer, the Agency Director, the Attorney General, and DFCM.

The lease will be recorded by DFCM on a computerized lease file for updating, renewal and control.

Approval of the Division of Finance is required to establish a payment schedule and issue a contract number.

R23-21-3. Renewal of Leases and Options.

DFCM will notify each agency at least six months in advance as to the expiration date of the lease. DFCM will consult with the agency on whether to renew an existing lease or seek new space. This will be based on space requirements and needs of the agency.

If the agency decides to renew a lease, they must submit a request to the Division of Facilities Construction and Management at least 120 days prior to the expiration date. If the leased space is conducive to the agency needs, then long-term leasing should be considered. Previously outlined procedures shall be followed for lease renewals and options that agencies may wish to exercise.

R23-21-4. Lease Advertisement Procedures and Specifications.

The Procurement Code requires that any agency wanting to lease new space must advertise for competitive proposals. Listed below, and in the following attachments, are the advertisement requirements of the Division of Facilities Construction and Management (DFCM).

A. Parties interested in submitting a proposal must complete a Schedule A, which is an Offeror/Lessor Proposal Sheet, and submit to DFCM before the advertised deadline.

B. The agency must submit to DFCM a Schedule B, which contains the Specifications for Advertisement of Space which DFCM will send to interested parties upon request. The advertisement will run for a period of three consecutive weekends. Materials required for advertisement must be received by DFCM no later than noon on Monday in order for the advertisement to be in the paper the following weekend.

R23-21-5. Non-State Tenants Utilizing State-Owned Space.

A. Request and Justification

A non-state or private company requesting to lease space in a state-owned facility must submit a request and justification statement to the Division of Facilities Construction and Management (DFCM) with reasonable notice prior to required date of occupancy. The criteria to evaluate the request of the non-state or private company shall include the following:

Planned use of the space
Proposed area or location of the lease
Any options that should be considered
Lease term
Lease rate and what services are included
Requested square footage
Projected use by a state agency of the space requested

B. Securing Space

Proposals will be reviewed jointly by the DFCM staff and the Agency.

Available space should be included in the master plan of all state agencies that is presented to the Utah State Building Board.

C. Negotiations

DFCM will negotiate, or may allow the agency(ies) to participate in the negotiations, so that state-owned space can be leased in the best interest of the state and at such rates that are consistent with similar private facilities taking into consideration such things as location, etc.

D. Lease Agreements

Using a standard lease agreement as prepared for use by DFCM, the non-state tenant, state agency using proposed facility, and staff of DFCM shall be involved in the preparation of the final written lease agreement.

E. Lease Approval and Processing

The lease will be distributed by DFCM for approval signatures and processing.

KEY: leases, leasing services
March 3, 1995 63A-5-103 et seq.
Notice of Continuation September 7, 2017

R23. Administrative Services, Facilities Construction and Management.

R23-24. Capital Projects Utilizing Non-appropriated Funds.

R23-24-1. Purpose.

To establish the policy of the Utah State Building Board relative to projects which are funded partially or totally by non-appropriated funds; establishing requirements for verification of funding and the timing of reimbursements to DFCM for expenditures made.

R23-24-2. Authority.

This rule is authorized under Subsection 63A-5-103(2)(a), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

R23-24-3. Background.

The Division of Facilities Construction and Management (DFCM) is charged with the responsibility of administering the design and construction of capital facilities costing over $100,000 for all state agencies and institutions regardless of funding source. The only exception to DFCM's administration is when a project is delegated to an agency or institution by the Utah State Building Board.

When projects are funded through Legislative appropriation, the funding is generally made available to DFCM prior to entering into contracts on those funds. However, many projects receive all or a part of their funding from other sources. Examples of these sources include donations, auxiliary funds, discretionary funds, reimbursed overhead, revenue bonds, and federal funds. In addition, some projects are made as a joint effort between state agencies or institutions and local governmental units. In these situations, DFCM needs to receive adequate assurance that the funding is in fact in place and that it will be reimbursed for expenditures as they are made.

R23-24-4. Policy.

The following policy will apply to all projects funded in whole or in part by non-appropriated funds.

(1) Before initiating the project, an executive having the authority to bind the agency or institution shall provide DFCM with a letter stating the funding to be provided by the agency or institution and committing to reimburse DFCM in accordance with this policy. In the case of a joint project with a non-state entity, a formal agreement shall be entered into.

(2) Prior to bidding the construction of the project, the agency or institution must provide DFCM with the following:

(a) A breakdown of the funding for the project showing the amount of cash available, the amount outstanding on legally enforceable contracts and commitments payable to the agency or institution and dedicated to the project, and the remaining difference.

(b) An explanation will be provided regarding how and when the remaining difference will be obtained. This difference may not exceed 25% of the project funding. DFCM reserves the right to require that a higher percentage of the funding be available if it determines that this is necessary to protect the state's interests.

(c) The agency or institution may commit that it will cover the remaining difference from other funds available to it until the full funding is obtained as long as this commitment is within the legal and financial capability of the agency or institution.

(d) Any exception to this policy must be approved by the Utah State Building Board and the state Director of Finance.

(3) The agency or institution will be responsible for providing its proportionate share of the funding. If the funding sources anticipated by the agency or institution do not meet its share of costs, the agency or institution must either provide alternate sources of funding or reduce the cost of the project to bring it back within the level of available funding.

(4) Any non-monetary assets donated as a funding source must be liquidated by the institution prior to the bidding of construction. Exceptions may be granted by the Utah State Building Board and the state Director of Finance when alternate funding can be assured.

(5) It is the responsibility of the agency or institution to inform DFCM immediately of any restrictions on the funding provided, including federal grants or donor restrictions.

(6) Agencies and institutions will be required to reimburse DFCM for their share of expenditures ratably throughout the project. An exception may be made if the agency or institution is providing funding for a specific element of the project such as equipment, furnishings, or fountains. This exception will not be granted if the funding is for items which are a basic and necessary element of the construction of the project.

(7) DFCM will submit monthly billings to agencies and institutions for their share of the expenditures made. Payment will be due back to DFCM within 16 working days of the billing date or the mailing date whichever is later. DFCM will notify the state Division of Finance of any billings not paid within seven days of the due date. The Division of Finance may deduct any delinquent invoices for DFCM from the next appropriation allotment to the institutions or transfer the funds to DFCM as may be appropriate. Before taking any action, the Division of Finance will consult with the governing body or head of the agency or institution as appropriate.

KEY: buildings
1994 63A-5-206(5)
Notice of Continuation September 7, 2017 63A-5-216

R68. Agriculture and Food, Plant Industry.
R68-15. Quarantine Pertaining to Japanese Beetle, (Popillia Japonica).
R68-15-1. Authority.

A. Promulgated under authority of Subsection 4-2-103(1)(k)(ii) and 4-35-109.

B. Refer to the Notice of Quarantine, Japanese Beetle, (Popillia Japonica), Effective January 4, 1993, issued by Utah Department of Agriculture and Food.

R68-15-2. Pest.

Japanese beetle, Popillia japonica, a beetle, family Scarabaeidae, which in the larval state attacks the roots of many plants and as an adult attacks the leaves and fruits of many plants.

R68-15-3. Areas Under Quarantine.

A. The following states have been placed under a general quarantine to prohibit the entry of Japanese Beetle into Utah through the sale of plants and plant products: the entire states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.

B. The same general quarantine shall apply to the following states in provinces of Canada:

1. In the Province of Ontario: Lincoln, Welland, and Wentworth.

2. In the Province of Quebec: Missiquoi and St. Jean.

C. Any areas not mentioned above where Japanese Beetle has been found or known to occur, shall also be placed under this same general quarantine.

R68-15-4. Articles and Commodities Under Quarantine.

A. The following are hereby declared to be hosts and possible carriers of all stages of the Japanese beetle:

1. Soil, humus, compost and manure (except when commercially packaged and treated);

2. All plants with roots (except bareroot plants free from soil).

3. Grass Sod;

4. Plant crowns or roots for propagation (except when free from soil);

5. Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil);

6. Any other plant, plant part, article, or means of conveyance when it is determined by a Utah State Plant Quarantine Officer to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle.

B. Packing material added to bareroot plants after harvesting would not normally pose a pest risk. Packing material would be covered under (6) above, at the inspector's discretion.

C. Free From Soil - For the purposes of this quarantine, free from soil is defined as soil in amounts that could not contain concealed Japanese beetle larvae or pupae.

R68-15-5. Restrictions.

All commodities covered are prohibited entry into Utah from the area under quarantine unless they have the required certification. Plants may be shipped from the area under quarantine into Utah provided such shipments conform to one of the options below and are accompanied by a certificate issued by an authorized state agricultural official at origin. Note that not all protocols approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Utah. Advance notification of regulated commodity shipment is required. The certificate shall bear the name and address of the shipper and receiver as well as the inspection/certificate date and the signature of state agricultural officer. The certifying official shall mail, FAX or e-mail a copy of the certificate to Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189,e-mail: UDAF-Nursery@utah.gov. The shipper shall notify the receiver to hold such commodities for inspection by the Utah Department of Agriculture and Food. The receiver must notify the Utah Department of Agriculture and Food of the arrival of commodities imported under the provisions of this quarantine and must hold such commodities for inspection. Such certificates shall be issued only if the shipment conforms fully with (a), (b), (c), (d) or (e) below:

(a) Production in an Approved Japanese Beetle Free Greenhouse/Screenhouse. All the following criteria apply: All media must be sterilized and free of soil; All stock must be free of soil (bareroot) before planting into the approved medium; The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period; During the adult flight period the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot gain entry. Security will be documented by the appropriate phytosanitary officials of the origin state department of agriculture and must be specifically approved as a secure area. They shall be inspected by the same officials for the presence of all life stages of the Japanese beetle; The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed and shipped; Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation; Each greenhouse/screenhouse operation must be approved by the phytosanitary officials as having met and maintained the above criteria, and issued an appropriate certificate bearing the following declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse." The certificate accompanying the shipment must have the same statement as an additional declaration.

(b) Production During a Pest Free Window. The entire rooted plant production cycle will be completed within a pest free window, in clean containers with sterilized and soilless growing medium, i.e., planting, growth, harvest, and shipment will occur outside the adult Japanese beetle flight period, June through October. The accompanying phytosanitary certificate shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season."

(c) Applications of Approved Regulatory Treatments. All treatments will be performed under direct supervision of a phytosanitary official of the origin state department of agriculture or under a compliance agreement thereof. Treatments and procedures under a compliance agreement will be monitored closely throughout the season. State phytosanitary certificates listing and verifying the treatment used must be forwarded to the receiving state via fax or electronic mail, as well as accompanying the shipment. Note that not all treatments approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Utah. The phytosanitary certificate shall bear the following additional declaration: "The rooted plants were treated to control "Popillia japonica" according to the criteria for shipment to category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Utah Japanese Beetle Quarantine."

(A) Dip Treatment - B and B and Container Plants. Not approved.

(B) Drench Treatments - Container Plants Only. Not approved for ornamental grasses or sedges. Potting media used must be sterile and soilless, containers must be clean. Field potted plants are not eligible for certification using this protocol. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season they must be retreated.

(1) Imidacloprid (Marathon 60WP). Apply one-half (0.5) gram of active ingredient per gallon as a prophylactic treatment just prior to Japanese beetle adult flight season (June 1, or as otherwise determined by the phytosanitary official). Apply tank mix as a drench to wet the entire surface of the potting media. A twenty-four (24) gallon tank mix should be enough to treat 120-140 one-gallon containers. Avoid over drenching so as not to waste active ingredient through leaching. During the adult flight season, plants must be retreated after sixteen (16) weeks if not shipped to assure adequate protection.

(2) Bifenthrin (Talstar Nursery Flowable 7.9%). Mix at the rate of twenty (20) ounces per 100 gallons of water. Apply, as a drench, approximately eight (8) ounces of tank mix per six (6) inches of container diameter.

(C) Media (Granule) Incorporation - Container Plants Only. All pesticides used for media incorporation must be mixed prior to potting and plants potted a minimum of thirty (30) days prior to shipment. Potting media used must be sterile and soilless; containers must be clean. The granules must be incorporated into the media prior to potting. Field potted plants are not eligible for treatment. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season they must be repotted with a granule incorporated mix or retreated using one of the approved drench treatments. Pesticides approved for media incorporation are:

(1) Imidacloprid (Marathon 1G). Mix at the rate of five (5) pounds per cubic yard.

(2) Bifenthrin (Talstar Nursery Granular or Talstar T and O Granular (0.2)). Mix at the rate of 25 ppm or one-third (0.33) of a pound per cubic yard based on a potting media bulk density of 200.

(3) Tefluthrin (Fireban 1.5 G). Mix at the rate of 25 ppm based on a potting media bulk density of 400.

(D) Methyl Bromide Fumigation. Nursery stock: methyl bromide fumigation at NAP, chamber or tarpaulin. See the California Commodity Treatment Manual for authorized schedules.

(E) Other treatment or protocol not described herein may be submitted for review and approval to the Commissioner of Utah Department of Agriculture and Food.

(d) Detection Survey for Origin Certification. Japanese Beetle Harmonization Plan protocol not approved. Alternative approved protocol: States listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of commodities covered may be accepted from these noninfested counties if annual surveys are made in such counties and adjacent counties and the results of such surveys are negative for Japanese beetle. In addition, the plants must be greenhouse grown or contained in media that is sterilized and free of soil and the shipping nursery must grow all their own stock from seed, unrooted cuttings or bareroot material. A list of counties so approved will be maintained by the Utah Department of Agriculture and Food. Agricultural officials from a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for such approval and stating how surveys were conducted giving the following information:

(A) Areas surveyed

(B) How survey was carried out

(C) Number of traps

(D) Results of survey

(E) History of survey

If a county was previously infested, give date of last infestation. If infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county must be reapproved every twelve (12) months. Shipments of commodities covered from noninfested counties will only be allowed entry into Utah if the uninfested county has been placed on the approved list prior to the arrival of the shipment in Utah. The certificate must have the following additional declaration: The plants in this consignment were produced in (name of county), state of (name of state of origin) that is known to be free of Japanese beetle.

(e) Privately owned house plants obviously grown, or certified at the place of origin as having been grown indoors without exposure to Japanese beetle may be allowed entry into this state without meeting the requirements of section (4). Contact the Utah Department of Agriculture and Food for requirements: Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189, e-mail: UDAF-Nursery@utah.gov.

R68-15-6. Disposition of Violations.

Any or all shipments or lots of quarantined articles or commodities listed in R68-15-4 above arriving in Utah in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Commissioner of the Utah Department of Agriculture and Food or his agent. Treatment shall be performed at the expense of the owner, or owners, or their duly authorized agent.

KEY: quarantine

December 14, 2007	**4-2-103**
Notice of Continuation August 3, 2017	**4-35-9**

R70. Agriculture and Food, Regulatory Services.
R70-960. Weights and Measures Fee Registration.
R70-960-1. Authority.

Promulgated under authority of 4-9-118.

R70-960-2. Definitions of Terms.

A. Fuel dispenser means a liquid measuring device used in a multiple product dispenser (MPD) and other fuel dispensing applications. These devices are counted as individual grades per side, per hose of dispenser, including diesel.

B. Meter means a vehicle tank meter, rack meter, LPG meter, any measuring device that is mounted on a vehicle, devices mounted as a rack meter at a fuel bulk plant or refinery, and any meter that dispenses LPG at a retail establishment. Each individual meter is counted as a device.

C. Load receiving element means that element of a scale that is designed to receive the load to be weighed, for example: platform, deck, rail, hopper, platter, plate, or scoop.

D. Small scale means any load receiving element of a weighing device capable of measuring weight between 0 pounds to 999 pounds.

E. Large scale means any load receiving element of a weighing device capable of measuring weight from 1000 pounds and up.

F. Check-out register means any device that is commercially used in a price verification system at a check-out register. Included are those devices that use Universal Product Code (U.P.C.) scanners, Electronic Product Code (E. P. C.) readers, manual entries, or any current or future use of any device that could be used at the final point of sale as a means for pricing for commercial sales.

R70-960-3. Application.

This rule shall apply to commercially-used weighing or measuring instruments or devices at the final point of sale. This will include the following: fuel dispensers, meter, small scale, large scale, and check-out register.

R70-960-4. Device Registration.

A. Weighing or measuring devices used for commercial purposes in the State of Utah shall be registered annually.

B. Each separate physical location of a business establishment must register the devices at that location.

C. The Department of Agriculture and Food may seek administrative or judicial remedies to achieve compliance with the laws and rules of Weights and Measures Fee Registration.

D. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

R70-960-5. Device.

The Department of Agriculture and Food may permit the registration to be applicable to a replacement for an original device or any additional devices within the annual registration period.

R70-960-6. Annual Registration Period.

Annual registration applications and fees are due December 31 of each year. All registrations expire on December 31 of each year. Fees paid are nonrefundable.

R70-960-7. Registration Certificate Displayed.

Any owner or user of commercially used weighing and measuring devices may display the current annual registration for those instruments and devices or produce the certification for review upon request.

R70-960-8. Registration.

A. Registration fees are established according with Section 4-9-118. When the appropriate fee is not paid on or before January 1, the registration shall become delinquent and a penalty fee shall be added as per Section 4-1-107. Any new facilities opening between January 1 and October 31, will be required to register appropriately. New facilities registering after November 1, will be registered for the remainder of that year and the following calendar year.

B. When a registration is suspended or revoked, no part of the fees paid for a registration shall be returned to the owner or operator of a registered weights and measures establishment.

KEY: inspections
November 2, 2004 4-9-15
Notice of Continuation September 8, 2014

R154. Commerce, Corporations and Commercial Code.
R154-1. Central Filing System for Agriculture Product Liens.
R154-1-1. Incorporation by Reference.

The Department of Commerce, Division of Corporations and Commercial Code (hereinafter "Division") incorporates by reference in its entirety 9 CFR Part 205 1992, entitled "Protection for Purchasers of Farm Products," which was developed by the Secretary of Agriculture to fulfill the Secretary's responsibility under Section 1324 of the Food Security Act of 1985, P.L. 99-198.

R154-1-2. Official Filing Office.

The system operator for the Central Filing System is the Division. All filings of any Effective Financing Statement, amendment thereto, or continuation thereof, are filed with the above Division. There are no other agencies of the State of Utah for filing.

R154-1-3. Master List.

The secured party must refile all liens on farm products produced in Utah presently on file in the Uniform Commercial Code Section of the Division in the Central Filing System on or before December 24, 1986, to protect the security interests of the secured party. Products not produced in Utah cannot be registered in the Central Filing System.

The Division shall publish the first Master List 30 days after December 24, 1986.

R154-1-4. Central Filing System (CFS).

Any filings in the Central Filing System must be filed on a CFS-1 form. Each filing must bear the signature of the debtor or be accompanied by a copy of the UCC-1 financing statement, certified by an employee of the secured party, showing filing date and the debtor's signature. Any CFS filing will be effective for a period of five years from the date of filing. Continuation CFS filings will extend the CFS filing for an additional five year period.

R154-1-5. Collateral of Crop Year.

Any filing which does not specify a particular crop year as to any one or more of the described farm products, shall be deemed to include all described farm products existing as of the date of filing together with all described farm products born, acquired or grown during the effective period of such filing.

R154-1-6. Recording of Effective Filing Statement.

The Division shall not record Effective Filing Statements received in the office after 4:00 p.m. until the next business day.

R154-1-7. Fees.

The Division shall charge fees for the use of the Central Filing System according to Section 63J-1-301. Fees shall be reasonable and fair, and shall reflect the costs of the services provided. The specific fees charged are posted at the Division offices or may be obtained by calling the Division offices.

R154-1-9. Searches.

Requests for information about any EFS filings will only be accepted by debtor name, debtor tax identification number or debtor social security number or by Effective Filing Statement file number.

R154-1-10. Telephone Requests.

Telephone requests for information concerning Central Filing System filings are limited to three inquiries per call.

R154-1-11. Requests for Certified Copies.

Requests for certified copies of Central Filing System files must be received in writing on Form CFS-2.

R154-1-12. Application for CFS Master List.

An applicant must register with the Division each year using Form CFS-4 to receive the CFS Master List and update. Registrations will expire at 5:00 p.m. on the last business day of the registration year.

R154-1-13. Change of Address.

Registrants must notify the Division of any change of address by filling out a new registration form CFS-4 in order to continue to receive copies of the Central Filing System Master List.

R154-1-14. Distribution of Master List.

The Division shall distribute the Utah State Central Filing System Master List at the beginning of each month, followed by a Master List update on the 15th of the same month. The Division shall distribute the Master List and Master List update to all current registrants.

1. New Effective Financing Statement filings only appear in the latest edition of the Master List or its update if filed with the Division before the cut-off deadline. The deadline for the monthly Master List update is filings made by 4:00 p.m. on the 15th day of the month. If the deadline falls on a weekend, holiday or other non-business day, the deadline will be the next business day after the normal deadline.

2. The Division shall mail Master Lists and update to registrants within five business days after the deadline day.

R154-1-15. Mailing of Master List.

The Division shall distribute all Central Filing System Master Lists and Central Filing System Master List Updates to current registrants by U.S. Post Office First Class Mail.

The Division shall require registrants residing in a state requiring notification by other than First Class Mail to pay any additional costs for mailing other than First Class Mail as a part of their registration filing.

R154-1-16. Notification of Registrants.

Registrants will be considered notified if:

1. The Division has mailed the list by First Class Mail by the deadline;

2. The Division has not received notice from the registrant of non-receipt of the list by 4:00 p.m. on the fifth business day after the distribution date.

3. Registrants notifying the Division of non-receipt will receive a new list by next day mail sent the same day as notice is given to the Division.

KEY: liens, crops
1991 70a-9-400
Notice of Continuation September 11, 2017

R277. Education, Administration.
R277-108. Annual Assurance of Compliance by Local School Boards.
R277-108-1. Definitions.

A. "Annual assurance letter" means a letter required annually from each local school board by the Board to be received no later than October 1 of each year that provides the required compliance information and documentation, if directed, for identified programs and funds.

B. "Board" means the Utah State Board of Education.

C. "USOE" means the Utah State Office of Education.

R277-108-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board; Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with the law.

B. The purpose of this rule is to provide local school boards with a list of laws requiring local school board action and a means of assuring that local boards are in compliance.

R277-108-3. Board/USOE Responsibilities.

A. The Board shall provide to school district superintendents, the superintendent for the Utah School for the Deaf and the Blind and charter school governing boards a list of laws and a list of State Board of Education Administrative Rules which require action or compliance by June 30 of each year.

B. The list shall identify laws and rules along with required compliance dates and reporting forms, if different or necessary than or in addition to the annual assurance letter.

C. The Board shall consolidate all required reporting and compliance forms and provide for electronic reporting, to the extent possible.

R277-108-4. Local Board and Identified School Responsibilities.

A. Local Boards shall submit the required Annual Assurance Letter(s) and other compliance forms on or before dates identified by the Board.

B. In the event that a local school board is unable to provide required assurances, compliance information or forms by required dates, the local school board shall provide to the USOE a written explanation of the local school board's inability and provide a compliance date. The request for delay in providing the assurance shall be reviewed by the Board or its designee and accepted or rejected in a timely manner.

R277-108-5. Assurances.

A. Each local school board and charter school governing board shall provide, consistent with state law, written assurance of the following:

(1) the National motto is displayed in schools consistent with Section 53A-13-101.4(6);

(2) the Pledge of Allegiance is recited in public schools consistent with Section 53A-13-101.6;

(3) a policy has been developed, in consultation with school personnel, parents, and school community, to provide for effective implementation of student education plans/student education occupation plans (SEPs/SEOPs) consistent with Section 53A-1a-106(2)(b);

(4) compliance with Section 53A-3-426 in that it does not endorse or provide preferential treatment for any education employee association;

(5) a policy has been developed for Quality Teaching Block Grant Program consistent with Section 53A-17a-124;

(6) a policy has been developed on education association leave consistent with Section 53A-3-425;

(7) each public school within the district has established a community council consistent with Section 53A-1a-108, and the community council members have been advised of their responsibilities consistent with Sections 53A-1a-108 and 53A-1a-108.5;

(8) the local school board has provided the USOE with required Utah Performance Assessment System for Students (U-PASS) test results in order for the USOE to fulfill the requirements of 53A-1-605;

(9) the district does not make payroll deductions from the wages of its employees for political purposes consistent with Section 34-32-1.1(2);

(10) the local school board has implemented a training program for school administrators consistent with Section 53A-3-402(1)(f);

(11) the local school board has an educator evaluation program developed by a joint committee including classroom teachers, parents and administrators consistent with Section 53A-10-103;

(12) the local school board or charter school governing board has presented and implemented an electronic device policy consistent with the timelines and provisions of R277-495;

(13) the school district or charter school has posted collective bargaining agreement(s) on the school district or charter school website within ten days of the ratification or modification of any collective bargaining agreement consistent with Section 53A-3-428; and

(14) by May 15, 2010, the school district or charter school has posted certain public financial information on the school district or charter school website consistent with Sections 63A-3-401 through 63A-3-404.

B. Letters from local school boards assuring compliance with the laws above are due to the State Superintendent of Public Instruction no later than October 1 of each year.

R277-108-6. Penalties for Noncompliance.

A. The Board shall request written explanation(s) from local school boards and identified schools that fail to meet reporting and compliance deadlines.

B. Following an opportunity to provide explanations and request delays, local school boards and identified schools shall be notified of penalties assessed by the Board against the local school boards.

C. Penalties may include:

(1) warning letters;

(2) letters of reprimand sent to the local school board with copies to appropriate Legislative committees;

(3) charter school review under R277-481; or

(4) interruption of monthly transfers of funds specified for administrative costs under Section 53A-17a-108, interruptions of disbursement of state aid under Section 53A-1-401(3) or withholding of specific program funds.

R277-108-7. Record Retention.

Letters of Assurance, as required by the Board, shall be kept on file at the USOE for five years, together with letters of explanation and documentation of penalties, as directed by the Board.

KEY: local school boards, compliance
December 17, 2012 **Art X Sec 3**
Notice of Continuation September 13, 2017 **53A-6-702**
53A-1-401(3)

R277. Education, Administration.
R277-110. Educator Salary Adjustment.
R277-110-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53A-17a-153(5) which authorizes the Board to make rules to administer the educator salary adjustment program.

(2) The purpose of this rule is to outline a consistent method for enacting educator salary adjustments in accordance with Section 53A-17a-153.

R277-110-2. Definitions.

(1) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" has the same meaning as defined in Subsection R277-512-2(1).

(2) "Educator" has the same meaning as defined in Subsection 53A-17a-153(1).

(3) "Educator Salary Adjustment" or "Adjustment" means funds allocated by the Board to an LEA in accordance with Subsection 53A-17a-153(3).

(4) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

R277-110-3. Procedures.

(1) An LEA shall:

(a)(i) have employee evaluation procedures consistent with Title 53A, Chapter 8a, Public Education Human Resource Management Act; or

(ii) if an LEA is exempt from the requirements of Subsection (1)(a)(i), have employee evaluation procedures in place to receive funds under Section 53A-17a-153;

(b) put the adjustment appropriation into the LEA's salary schedule each year that funds are appropriated by the Legislature;

(c) ensure the amount of the adjustment is the same for each eligible full-time-equivalent educator position in the LEA;

(d) ensure that each eligible employee who is not a full-time educator receives a proportional salary adjustment based on the number of hours the employee works in the employee's current assignment as an educator; and

(e) ensure that each educator who receives an adjustment has received a satisfactory or above job performance rating in the educator's most recent evaluation concluded in the school year prior to the year for which the adjustment is made.

(2) Notwithstanding Subsection (1)(e), an LEA may grant an adjustment to a new hire who has successfully completed the position hiring process and been selected for an educator position.

(3) Once an educator qualifies for an adjustment in a designated school year, the adjustment becomes an ongoing part of the educator's salary.

(4) An educator shall receive an annual adjustment of $4200 based upon legislative funding allocations.

(5) A school building level administrator shall receive an annual adjustment of $2500 and benefits as provided in Subsection 53A-17a-153(7).

(6) Each LEA shall annually note on the appropriate salary schedule:

(a) the amount of the educator salary adjustment;

(b) the positions qualifying for the adjustment; and

(c) performance rating requirements in accordance with Subsection 53A-17a-153(4)(c).

(7) Each LEA shall annually maintain record of performance ratings for an educator receiving an adjustment in accordance with this rule.

(8)(a) The Superintendent shall remit to LEAs an estimated educator salary adjustment allotment through monthly bank transfers and allotment memos beginning in July of each year.

(b) The Superintendent shall adjust the allotment amount in November of each year to match the number of qualified educators in CACTUS.

(9) An adjustment to CACTUS made after November 15 may not count towards an LEA's amount for educator salary adjustments until the following year.

(10) An LEA may not include educator salary adjustments when calculating the weighted average compensation adjustment for non-administrative licensed staff.

KEY: educators, salary adjustments

September 21, 2017	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53A-1-401**
	53A-17a-153(5)

R277. Education, Administration.
R277-401. Child Abuse-Neglect Reporting by Education Personnel.
R277-401-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 62A-4a-403, which requires individuals to report suspected child abuse or neglect to appropriate authorities; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to clarify:

(a) the Board's support for taking early protective measures towards allegations of child abuse by education personnel whose daily contact with children places them in a unique position to identify and refer suspected cases of abuse or neglect; and

(b) the role of all school employees in reporting and participating in investigations of suspected child abuse and neglect.

R277-401-2. Definitions.

(1) "Abused child" has the same meaning as defined in Subsection 78A-6-105(2).

(2) "DCFS" means the Utah Division of Child and Family Services.

(3) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(4) "Neglected child" has the same meaning as defined in Subsection 78A-6-105(36).

R277-401-3. Policies and Procedures.

(1) Each LEA shall develop and adopt a child abuse-neglect policy, which shall include, at a minimum, the following provisions:

(a) an LEA employee shall cooperate with social service and law enforcement agency employees authorized to investigate charges of child abuse and neglect, including:

(i) allowing appropriate access to students;

(ii) allowing authorized agency employees to interview children consistent with DCFS and local law enforcement protocols;

(iii) making no contact with the parents or legal guardians of children being questioned by DCFs or law enforcement authorities; and

(iv) maintaining appropriate confidentiality;

(b) an LEA shall preserve the anonymity of those reporting or investigating child abuse or neglect; and

(c)(i) any school employee who knows or reasonably believes that a child has been neglected, or physically or sexually abused, shall immediately notify the nearest peace officer, law enforcement agency, or DCFS.

(ii) If a school employee reasonably suspects child abuse or neglect, it is not the responsibility of the school employee to prove that the child has been abused or neglected, or determine whether the child is in need of protection.

(iii) Investigation by education personnel prior to submitting a report should not go beyond that necessary to support a reason to believe that a reportable problem exists.

(2) An LEA policy may direct a school employee to notify a school official of suspected neglect or abuse, but any such requirement shall clarify that notifying a school official does not satisfy the employee's personal duty to report to law enforcement or DCFS.

(3) Persons making reports or participating in an investigation of alleged child abuse or neglect in good faith are immune from any civil or criminal liability that otherwise might arise from those actions, as provided by law.

(4) An LEA shall annually notify an employee of the employee's legal responsibility to report suspected child abuse or neglect to appropriate authorities as described in Section 62A-4a-403.

KEY: child abuse, employees, reporting, students
September 21, 2017 Art X Sec 3
Notice of Continuation July 19, 2017 53A-1-401

R277. Education, Administration.
R277-407. School Fees.
R277-407-1. Authority and Purpose.

(1) This rule is authorized under:

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

(b) Article X, Section 2 of the Utah Constitution, which provides that:

(i) public elementary schools shall be free; and

(ii) secondary schools shall be free, unless the Legislature authorizes the imposition of fees;

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(d) Subsection 53A-12-102(2), which authorizes the Board to adopt rules regarding student fees.

(2) This rule also serves to comply with the Permanent Injunction issued in Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).

(3) The purpose of this rule is to:

(a) permit the orderly establishment of a system of reasonable fees;

(b) provide adequate notice to students and families of fees and fee waiver requirements; and

(c) prohibit practices that would exclude those unable to pay from participation in school-sponsored activities.

R277-407-2. Definitions.

(1)(a) "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods.

(b) An admission fee, transportation charge, or similar payment to a third party is a fee if the charge is made in connection with an activity or function sponsored by or through a school.

(c) For purposes of this rule, a charge related to the National School Lunch Program is not a fee.

(2) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(3) "Optional project" means a non-mandatory project chosen and retained by a student, for which the student covers the cost or provides the materials, in lieu of, or in addition to a mandatory classroom project otherwise available to the student which would require only school-supplied materials.

(4)(a) "Provision in lieu of fee waiver" means an alternative to fee payment or waiver of fee payment.

(b) A plan under which fees are paid in installments or under some other delayed payment arrangement is not a waiver or provision in lieu of fee waiver.

(5)(a) "Student supplies" means items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities.

(b) "Student supplies" include:

(i) pencils;

(ii) paper;

(iii) notebooks;

(iv) crayons;

(v) scissors;

(vi) basic clothing for healthy lifestyle classes; and

(vii) similar personal or consumable items over which a student retains ownership.

(c) "Student supplies" does not include items listed in Subsection (5)(b) for which specific requirements such as brand, color, or a special imprint are set in order to create a uniform appearance not related to basic function.

(6) "Supplemental Security Income for children with disabilities" or "SSI" means a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.

(7) "Temporary Assistance for Needy Families" or "TANF," means a program, formerly known as AFDC, which provides monthly cash assistance and food stamps to low-income families with children under age 18 through the Utah Department of Workforce Services.

(8) "Textbook" means a book, workbook, or materials similar in function, which are required for participation in a course of instruction.

(9) "Waiver" means a release from the requirement of payment of a fee and from any provision in lieu of fee payment.

R277-407-3. Classes and Activities During the Regular School Day.

(1) No fee may be charged in kindergarten through sixth grades for:

(a) materials;

(b) textbooks;

(c) supplies; or

(d) any class or regular school day activity, including assemblies and field trips.

(2) A school may charge textbook fees in grades seven through twelve.

(3)(a) Notwithstanding, Subsection (1), a school may charge fees to students in sixth grade if the student attends a school that includes any grades seven through twelve.

(b) If a school charges fees in accordance with Subsection (3)(a), the school shall annually provide notice to parents that the school will collect fees from sixth grade students and that the fees are subject to waiver.

(4) If a class is established or approved, which requires payment of fees or purchase of items in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the fees or costs for the class shall be subject to the fee waiver provisions of Rule R277-407-6.

(5)(a) A school may require a student at any grade level to provide materials or pay for an optional project, but a school may not require a student to select an optional project as a condition for enrolling in or completing a course.

(b) A school shall base mandatory course projects on experiences that are free to all students.

(6)(a) A school shall provide student supplies for k-6 students.

(b) A school may require a student to replace student supplies provided by the school, which are lost, wasted, or damaged by the student through careless or irresponsible behavior.

(7)(a) An elementary school or teacher may provide to parents or guardians a suggested list of student supplies.

(b) A suggested list provided in accordance with Subsection (a) shall contain the express language in Subsection 53A-12-102(4)(c).

(8) A school may require a secondary student to provide student supplies, subject to the provisions of Section R277-407-6.

R277-407-4. School Activities Outside of the Regular School Day.

(1) A school may charge a fee, subject to the provisions of Section R277-407-6, in connection with any school-sponsored activity, which does not take place during the regular school day, regardless of the age or grade level of the student, if participation in the activity is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

(2) A fee related to an extracurricular activity may not exceed limits established by the LEA governing board.

(3) A school shall collect fees for school-sponsored activities consistent with LEA policies and state law.

R277-407-5. General Provisions.

(1) An LEA may not charge or assess a fee in connection with any class or school-sponsored or supported activity, including an extracurricular activity, unless the fee has been set and approved by the LEA's governing board and distributed in an approved fee schedule or notice in accordance with this rule.

(2)(a) An LEA governing board shall adopted a fee schedule and fee policies for the LEA at least once each year in a regularly scheduled public meeting.

(b) An LEA shall provide public notice in accordance with Title 52, Chapter 4, Open and Public Meetings Act and shall encourage public participation in the development of fee schedules and waiver policies.

(c) An LEA shall keep minutes of meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, in accordance with Section 52-4-203.

(3)(a) An LEA shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends a school within the LEA receives written notice of all current and applicable fee schedules and fee waiver policies.

(b) An LEA policy shall include easily understandable procedures for obtaining a fee waiver and for appealing a denial of a fee waiver, as soon as possible prior to the time when fees become due.

(4) An LEA shall include a copy of the schedules and waiver policies with registration materials provided to potential or continuing students.

(5)(a) A school may not deny a present or former student receipt of transcripts or a diploma, nor may a school refuse to issue a grade for a course for failure to pay school fees.

(b) A school may impose a reasonable charge to cover the cost of duplicating or mailing transcripts and other school records.

(c) A school may not charge for duplicating or mailing copies of school records to an elementary or secondary school in which a former student is enrolled or intends to enroll.

(6) To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

(7)(a) An LEA may solicit and accept a donation or contribution in accordance with the LEA's policies, but all such requests must clearly state that donations and contributions are voluntary.

(b) A donation is a fee if a student is required to make a donation in order to participate in an activity.

R277-407-6. Waivers.

(1) An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

(2) An LEA shall waive textbook fees for eligible students in accordance with Subsection 53A-12-204(2).

(3) An LEA shall designate at least one person at an appropriate administrative level in each school to review and grant fee waiver requests.

(4) An LEA shall administer the process for obtaining a fee waiver or pursuing an alternative fairly, objectively, without delay, and in a manner that avoids stigma, embarrassment, undue attention, and unreasonable burdens on students and parents.

(5) An LEA may not treat a student receiving a fee waiver or provision in lieu of a fee waiver differently from other students.

(6) A school may not identify a student on fee waiver to students, staff members, or other persons who do not need to know.

(7)(a) An LEA shall ensure that a fee waiver or other provision in lieu of fee waiver is available to any student whose parent is unable to pay a fee.

(b) A school or LEA administrator shall verify fee waivers consistent with this rule.

(8) An LEA shall submit fee waiver compliance forms for each school consistent with Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994) that affirm compliance with the permanent injunction.

(9) An LEA shall adopt a policy for review of fee waiver requests which:

(a) gives parents the opportunity to review proposed alternatives to fee waivers;

(b) establishes a timely appeal process, which shall include the opportunity to appeal to the LEA or its designee; and

(c) suspends any requirement that a given student pay a fee during any period for which the student's eligibility for waiver is under consideration or during which an appeal of denial of a fee waiver is in process.

(10) The granting of waivers and provisions in lieu of fee waivers in an LEA may not produce significant inequities through unequal impact on individual schools.

(11) An LEA may pursue reasonable methods for collecting student fees, but may not, as a result of unpaid fees:

(a) exclude a student from school;

(b) refuse to issue a course grade; or

(c) withhold official student records, including written or electronic grade reports, diplomas or transcripts.

(12)(a) A school may withhold student records in accordance with Subsection 53A-11-806(2)(a).

(b) Notwithstanding Subsection (12)(a), a school may not withhold any records required for student enrollment or placement in a subsequent school.

(13) A school is not required to waive fees for class rings, letter jackets, school photos, or yearbooks, which are not required for participation in a class or activity.

(14) Expenditures for uniforms, costumes, clothing, or accessories, other than items of typical student dress, which are required for school attendance or participation in school activities, and expenditures for student travel as part of a school team, student group, or other school-approved trip, are fees requiring approval of the LEA, and are subject to the provisions of this section.

R277-407-7. Fee Waiver Eligibility.

(1) A student is eligible for fee waiver if an LEA receives verification that:

(a) based on family income, the student qualifies for free school lunch under United States Department of Agriculture child nutrition program regulations;

(b) the student to whom the fee applies receives SSI;

(c) the family receives TANF funding;

(d) the student is in foster care through the Division of Child and Family Services; or

(e) the student is in state custody.

(2) In lieu of income verification, an LEA may require alternative verification under the following circumstances:

(a) If a student's family receives TANF, an LEA may require a letter of decision covering the period for which a fee waiver is sought from the Utah Department of Workforce

Services;

(b) If a student receives SSI, an LEA may require a benefit verification letter from the Social Security Administration;

(c) If a student is in state custody or foster care, an LEA may rely on the youth in custody required intake form and school enrollment letter or both provided by a case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.

(3) A school may grant a fee waiver to a student, on a case by case basis, who does not qualify for a fee waiver under Subsection (1), but who, because of extenuating circumstances is not reasonably capable of paying the fee.

R277-407-8. Fee Waiver Reporting Requirements.

(1) An LEA shall attach to its annual S-3 statistical report for inclusion in the State Superintendent of Public Instruction's annual report the following:

(a) a summary of:

(i) the number of students in the LEA given fee waivers;

(ii) the number of students who worked in lieu of a waiver; and

(iii) the total dollar value of student fees waived by the LEA;

(b) a copy of the LEA's fee and fee waiver policies;

(c) a copy of the LEA's fee schedule for students; and

(d) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian.

(e) a fee waiver compliance form approved by the Superintendent for each school and LEA.

KEY: education, school fees
September 21, 2017 **Art X Sec 2**
Notice of Continuation July 19, 2017 **Art X Sec 3**
53A-1-401
53A-12-102
Doe v. Utah State Board of Education, Civil No. 920903376

R277. Education, Administration.
R277-420. Aiding Financially Distressed School Districts.
R277-420-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Interfund transfer" means a transaction which withdraws money from one fund and places it in another without recourse. Interfund transfers are regulated by statute and Board rules. Interfund transfers do not include interfund loans in which money is temporarily withdrawn from a fund with full obligation for repayment during the fiscal year.

C. "School district," for purposes of this rule, means school district under the direction of the local board of education.

D. "State Superintendent" means the State Superintendent of Public Instruction. For purposes of this rule, the Board's designee is the State Superintendent.

E. "USOE" means the Utah State Office of Education.

F. "Without recourse" means there is no obligation to return withdrawn money to the fund from which it was transferred.

R277-420-2. Authority and Purpose.

A. This rule is authorized by Section 53A-19-105(5) which requires the Board to develop standards for defining and aiding financially distressed school districts, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the eligibility requirements for and the procedures for nonrecurring or nonroutine interfund transfers for financially distressed school districts.

R277-420-3. Eligibility.

To qualify as a financially distressed school district, a school district shall meet all of the following requirements:

A. Have a deficit of three percent or more in its year end unappropriated maintenance and operation fund balance following a reduction for any amount in an undistributed reserve.

B. Be unable to meet its financial obligations in a timely manner.

C. Be unable to reduce the maintenance and operation deficit by twenty-five percent in its budget for the next year.

D. Have made reasonable, local efforts to eliminate the deficit.

E. Be financially incapable of meeting statewide educational standards adopted by the Board.

F. Have a deficit resulting from circumstances not subject to administrative decisions. This judgment shall be made following an on-site visit and consultation with the school district and local school board by USOE staff.

R277-420-4. Procedures for Making Interfund Transfers.

A. A local school board applying to qualify for an interfund transfer under this rule shall request that the USOE visit the school district, conduct an audit, and assist the local school board and district staff in developing a plan to eliminate the deficit.

B. The school district shall meet the eligibility requirements of R277-420-3 and be approved as a financially distressed school district by the Board or its designee.

C. A school district designated as financially distressed may make nonrecurring or nonroutine interfund transfers to the maintenance and operation fund upon the approval of the Board or its designee.

D. The interfund transfer shall be established by the school district under the direction of the local school board in an undistributed reserve account consistent with Section 53A-19-103.

KEY: education finance
November 8, 2012 53A-19-105
Notice of Continuation September 13, 2017 53A-1-401(3)
53A-19-103

R277. Education, Administration.
R277-422. State Supported Voted Local Levy, Board Local Levy and Reading Improvement Program.
R277-422-1. Definitions.

A. "Ad valorem property tax" means a tax based on the assessed value of real estate or personal property.

B. "Board" means the Utah State Board of Education.

C. "Board local levy" means a state-supported program under Section 53A-17a-164 to cover a portion of the costs within the school district's general fund of the state-supported minimum school program.

D. "Free or reduced meal applications" means the applications received by a school district or charter school under the Board-supervised federal Child Nutrition Program.

E. "Local board" means the school board members elected to govern a school district.

F. "State-supported" means a formula-based state contribution of funds to the voted local levy program and the Board local levy program as defined in Section 53A-17a-133(3) and Section 53A-17a-164(3).

G. "USOE" means the Utah State Office of Education.

H. "Voted local levy" means a state-supported program in which a voter-approved property tax levy under Section 53A-17a-133 is authorized to cover a portion of the costs within the general fund of the state-supported minimum school program in a district.

I. "Weighted pupil unit (WPU)" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-422-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(e) which directs the Board to establish rules for school productivity and cost effectiveness measures, federal programs, school budget formats, and financial, statistical, and student accounting requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify requirements, timelines, and clarifications for the state-supported voted local levy, board local levy, and reading improvement program.

R277-422-3. Requirements and Timelines for State-Supported Voted Local Levy.

A. A local board may establish a state-supported voted local levy program following an election process that approves a special tax. The election process is provided for under Section 53A-17a-133(2).

B. Local boards which have approved voted local levy or voted leeway programs since 1965 may set an annual fiscal year fixed tax rate levy for the voted local levy equal to or less than the levy authorized by the election.

C. A school district may budget an increased amount of ad valorem property tax revenue from a voted local levy in addition to revenue from new growth without required compliance with the advertisement requirements if the voted local levy is or was approved:

(1) on or after January 1, 2003;

(2) within the four-year period immediately preceding the year in which the school district seeks to budget an increased amount of ad valorem property tax; and

(3) for a voted local levy approved or modified on or after January 1, 2009, the proposition submitted to the voters contains the following statement: A vote in favor of this tax means that (name of school district) may increase revenue from this property tax without advertising the increase for the next five years.

D. Any prior year voted and board local funding balance shall be used to increase the current guarantee for the board and voted local levy programs. Funding shall be distributed based on the increased guarantee per WPU.

E. State and local funds received by a local board under the voted local levy program are unrestricted revenue and may be budgeted and expended within the school district's general fund.

F. In order to receive state support for an initial voted local levy tax rate, a local board shall receive voter approval no later than December 1 prior to the commencement of the fiscal year of implementation of that initial voted local levy tax rate.

G. If a school district qualifies for state support the year prior to an increase in its existing voted local levy; and:

(1) does not receive voter approval for an increase after June 30 of the previous fiscal year and before December 2 of the previous fiscal year; and

(2) intends to levy the additional rate for the fiscal year starting the following July 1; then

(3) the district shall only receive state support for the existing voted local levy tax rate and not the additional voter-approved tax rate for the fiscal year commencing the following July 1, and

(4) shall receive state support for the existing and additional voter-approved tax rate for each year thereafter, as long as the district qualifies to receive state support.

R277-422-4. K-3 Reading Achievement Program.

A. The K-3 Reading Improvement Program consists of program funds and is created to achieve the state's goal of having third graders reading at or above grade level.

B. Funding

(1) The calculation for the K-3 Reading Achievement funding shall be consistent with Section 53A-17a-150 which requires matching funds and Section 53A-17a-151.

(2) School districts shall use the following data for the reading fund calculations:

(a) the most current numbers of final adjusted assessed valuations received from the Utah State Tax Commission;

(b) the year's tax collection rate, that corresponds to the year provided under R277-522-4B(2)(a);

(c) the previous fiscal year's number of Free and Reduced Price Meal applications; and

(d) the current fiscal year total number of WPUs received by each school district for the basic school program.

KEY: education, finance
November 10, 2014 **Art X Sec 3**
Notice of Continuation September 13, 2017 **53A-1-402(1)(f)**
53A-1-401(3)
53A-17a-133
53A-17a-164
53A-17a-150
53A-17a-151
59-2-919

R277. Education, Administration.
R277-424. Indirect Costs for State Programs.
R277-424-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Direct costs" means costs which can be easily, obviously, and conveniently identified by the Utah State Office of Education with a specific program.

C. "Indirect costs" means the costs of providing indirect services. Restricted and non-restricted indirect costs are defined in R277-425, "Budgeting, Accounting and Auditing Handbook for Utah School Districts."

D. "Indirect Services" means services which cannot be identified with a specific program.

E. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

F. "Non-restricted indirect cost rate" means a rate assigned to each LEA annually, based on the ratio of non-restricted indirect costs to direct costs as reported in the annual financial report for the specific LEA.

G. "Restricted indirect cost rate" means a rate assigned to each LEA annually based on the ratio of restricted indirect costs to direct costs as reported in the annual financial report for the specific LEA.

H. "Unallowable costs" means expenditures directly attributable to governance. Governance includes salaries and expenditures of the office of the superintendent, the governing board, election expenses, and expenditures for fringe benefits which are associated with unallowable salary expenditures.

R277-424-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(e) which directs the Board to adopt rules for financial, statistical, and student accounting requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish Board standards for claiming indirect costs for state programs.

R277-424-3. Standards.

A(1) LEAs may charge indirect costs to state funded programs.

(2) The Board shall not authorize or pay indirect costs to higher education institutions for state funded contractual work.

B. Prior to the beginning of each fiscal year, the Utah State Office of Education publishes a schedule of the indirect cost rates for state programs. The schedule is developed from data gathered from the Annual Financial Reports submitted by the LEAs. Each program schedule shows whether or not the restricted or non-restricted indirect cost rate applies and whether or not indirect costs are allowable or applicable.

C. Recovery of indirect costs is subject to availability of funds. If a combination of direct and indirect costs exceeds funds available, then the LEA may not recover the total cost of the project or program. Recovery of indirect costs for state programs is optional for LEAs.

D. Indirect costs for state programs may be recovered only to the extent that direct costs were incurred. The indirect cost rate is applied to the amount expended, not to the total grant, in order to determine the amount for indirect costs.

KEY: education finance
November 8, 2012 Art X Sec 3
Notice of Continuation September 13, 2017 53A-1-402(1)(f)
53A-1-401(3)

R277. Education, Administration.
R277-426. Definition of Private and Non-Profit Schools for Federal Program Services.
R277-426-1. Definitions.

"Board" means the Utah State Board of Education.

R277-426-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-402(3) which allows the Board to administer federal funds and to distribute them to eligible applicants, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to define requirements that private, non-public, and non-profit schools must meet to receive services under federal laws requiring the public education system to serve students in these schools.

R277-426-3. Qualifications.

For the purposes of receiving services under federal programs which permit such:

A. "Private or non-public school" means a school which:

(1) is owned and operated by an individual, a religious institution, a partnership, or a corporation other than the State, a subdivision of the State, or by the Federal government;

(2) is supported primarily by other than public funds;

(3) vests the operation and determination of its program with other than publicly-elected or appointed officials;

(4) teaches the required subjects on each grade level as designated by the Board for the same length of time as students must be taught in the public schools;

(5) is properly licensed if so required by the appropriate governmental jurisdiction;

(6) complies with any state and local ordinances and codes pertaining to the operation of that type facility or institution; and

(7) is not a charter school.

B. "Non-profit school" means a school which:

(1) is not a part of the public school system;

(2) is operated with no intention of making a profit;

(3) does not exist to provide educational services to students enrolled in for profit residential programs;

(4) possesses a State of Utah Tax Exemption number and a United States Internal Revenue Service Employer Identification Number (EIN) and a favorable Exempt Organization Determination Letter;

(5) teaches the required subjects on each grade level as designated by the Board for the same length of time as students must be taught in the public schools;

(6) is properly licensed if so required by the appropriate governmental jurisdiction; and

(7) complies with any state and local ordinances and codes pertaining to the operation of that type facility or institution.

KEY: education finance, private schools

February 7, 2012	**Art X Sec 3**
Notice of Continuation September 13, 2017	**53A-1-402(3)**
	53A-1-401(3)

R277. Education, Administration.
R277-433. Disposal of Textbooks in the Public Schools.
R277-433-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-12-207, which requires the Board to make rules providing for the disposal or reuse of useable textbooks in the public schools.

(2) The purpose of this rule is to provide procedures for LEA policies for the reuse or disposal of textbooks in the public schools.

R277-433-2. Definitions.

(1) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(2) "Textbook" means:

(a) any printed book that is required for participation in a course of instruction;

(b) printed texts approved for pilot or trial use by the State Instructional Materials Commission; or

(c) books used in classes for which textbooks are generally not adopted at the state level.

(3) "Useable textbooks" means a set of at least 25 textbooks that are not badly damaged, worn out, or outdated.

R277-433-3. LEA Policies on Disposal of Textbooks.

(1) Each LEA shall develop policies regarding the reuse or disposal of textbooks.

(2) An LEA's policies shall provide procedures for notification to other LEAs of available textbooks and timelines for disposal of textbooks.

(3) An LEA's policies shall provide procedures for negotiating the exchange of the textbooks.

KEY: textbooks

September 21, 2017	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53A-1-401**
	53A-12-207

R277. Education, Administration.
R277-445. Classifying Small Schools as Necessarily Existent.
R277-445-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Subsection 53A-17a-109(3), which requires the Board to adopt rules that:

(i) govern the approval of necessarily existent small schools consistent with state law; and

(ii) ensure that districts are not building secondary schools in close proximity to one another where economy and efficiency would be better served by one school meeting the needs of secondary students in a designated geographical area; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2)(a) The purpose of this rule is to specify the standards by which the Board classifies schools as necessarily existent, which qualifies the schools for additional funding.

R277-445-2. Definitions.

(1) "ADM" means average daily membership derived from end-of-year data.

(2) "Weighted Pupil Unit" or "WPU" means the basic unit used to calculate the amount of state funds a school district may receive.

R277-445-3. Standards.

(1) A school may be classified as necessarily existent if the school's ADM does not exceed:

(a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership;

(b) 300 for one or two-year secondary schools;

(c) 450 for three-year secondary schools;

(d) 500 for four-year secondary schools; or

(e) 600 for six-year secondary schools.

(2) In addition to the requirements of Subsection (1), one-way bus travel over Board approved bus routes for any student from the assigned school to the nearest school within the district of the same type shall require:

(a) students in kindergarten through grade six to travel more than 45 minutes; or

(b) students in grades seven through twelve to travel more than one hour and 15 minutes.

(3) Notwithstanding Subsection (2), the Superintendent may classify a school that meets the criteria of Subsection (1), as necessarily existent if:

(a) the school is in a district which has been consolidated to the maximum extent possible, and activities in cooperation with neighboring districts within or across county boundaries are appropriately combined;

(b) there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years, provided that.

(i) the Superintendent may only classify the school as necessarily existent until its ADM surpasses the size standard for small schools of the same type;

(ii) the Superintendent shall annually compare the school's ADM to the school's projected ADM to determine increases or decreases in enrollment;

(iii) if the assessment for the first or second year shows the increase in the school's ADM is less than 80 percent of the projected annual increase, the school shall no longer be classified as necessarily existent;

(c) the Superintendent determines that consolidation may result in undesirable social, cultural, and economic changes in the community, and:

(i) the school has a safe and educationally adequate school facility with a life expectancy of at least ten years, as judged, at least every five years, by the Superintendent after consultation with the district; or

(ii)(A) the district would incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs would exceed the insurance replacement value of the exiting school by 30 percent;

(B) the existing school has a life expectancy of at least ten years; but

(C) In the event that the ADM from the school seeking necessarily existent small school status under Subsection (3)(c)(ii), when combined with the ADM at the existing school exceed criteria in Subsection (1), the Superintendent may not classify the existing school as necessarily existent; or

(d) the school does not qualify under Subsections (3)(a) through (c), and removal of the necessarily existent status would result in capital costs that the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources.

(4) The Superintendent may not recognize a school with less than six grades as a necessarily existent small school if its is feasible in terms of school plant to consolidate the school into a larger school, which, if consolidated, would meet the criteria of Subsection (1) and (2).

(5) If the Superintendent determines that a secondary complex or attendance area meets the criteria of necessarily existent when analyzed on a 7-12 grade basis, the Superintendent shall not invalidate the qualifying status as a result of a reorganization pattern by a district.

(6)(a) In accordance with Subsection 53A-2-204(3)(b)(ii), the Superintendent shall use Necessarily Existent Small Schools Program funds to cover out-of-state tuition reimbursements under Rule R277-421.

(b) Any prior year funding balance in the Necessarily Existent Small Schools Program shall be distributed by the Superintendent in the current year using a formula that considers the tax effort of a local board of education.

(7)(a) A school district shall utilize additional WPU funds allocated for necessarily existent small schools for programs at the school for which the units were allocated.

(b) Funds allocated under this rule shall supplement and not supplant other funds allocated to schools by the local board of education.

(8) The Superintendent shall classify a school after consultation with the district and in accordance with applicable state statutes and Board rules.

KEY: school enrollment, educational facilities

September 21, 2017	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53A-1-401**
	53A-17a-109(1)

R277. Education, Administration.
R277-454. Construction Management of School Building Projects.
R277-454-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "CM" means an individual designated as a construction manager. The CM may be an architect, engineer, general contractor, or other professional consultant. It may also be an entity which is referred to as a construction management firm. The CM works as the agent of the owner of the construction project. The CM, at the discretion of the owner, may assist in the development and implementation of any or all of the predesign, design, bidding, construction, and occupancy stages of the construction project. The CM is responsible for the effective, orderly, and acceptable completion of the construction project.

C. "Construction management" means a contractual and professional working relationship between the owner of a construction project and a CM.

D. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

R277-454-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Section 53A-20-103 which requires the Board to prepare an annual school plant capital outlay report of all LEAs, which includes information on the number and size of building projects completed and under construction.

B. The purpose of this rule is to specify the standards local boards of education shall follow in using construction management for school construction projects.

R277-454-3. Standards.

A. A construction management contract shall clearly specify the duties of the CM with respect to the building project.

B. An LEA shall bid each component part of the building project in accordance with advertising, public opening, performance bond, payment bond, and other statutory requirements.

KEY: educational facilities, education finance
November 8, 2012 Art X Sec 3
Notice of Continuation September 13, 2017 53A-1-401(3)
53A-20-103

R277. Education, Administration.
R277-474. School Instruction and Human Sexuality.
R277-474-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Curriculum materials review committee (committee)" means a committee formed at the district or school level, as determined by the local board of education or local charter board, that includes parents, health professionals, school health educators, and administrators, with at least as many parents as school employees. The membership of the committee shall be appointed and reviewed annually by August 1 of each year by the local board, shall meet on a regular basis as determined by the membership, shall select its own officers and shall be subject to Sections 52-4-1 through 52-4-10.

C. "Family Educational Rights and Privacy Act" is a state statute, Sections 53A-13-301 and 53A-13-302, that protects the privacy of students, their parents, and their families, and supports parental involvement in the public education of their children.

D. "Human sexuality instruction or instructional programs" means any course, unit, class, activity or presentation that provides instruction or information to students about sexual abstinence, human reproduction, reproductive anatomy, physiology, pregnancy, marriage, childbirth, parenthood, contraception, or HIV/AIDS and other sexually transmitted diseases. While these topics are most likely discussed in such courses as health education, health occupations, human biology, physiology, parenting, adult roles, psychology, sociology, child development, and biology, this rule applies to any course or class in which these topics are the focus of discussion.

E. "Instructional Materials Commission" means an advisory commission authorized under Section 53A-14-101.

F. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

G. "Maturation education" means instruction and materials used to provide fifth or sixth grade students with age appropriate, accurate information regarding the physical and emotional changes associated with puberty, to assist in protecting students from abuse and to promote hygiene and good health practices.

H. "Medically accurate" means verified or supported by a body of research conducted in compliance with scientific methods and published in journals that have received peer-review, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the American Medical Association.

I. "Parental notification form" means a form developed by the USOE and used exclusively by LEAs or Utah public schools for parental notification of subject matter identified in this rule. Students may not participate in human sexuality instruction, maturation education, or instructional programs as identified in R277-474-2D without prior affirmative parent/guardian response on file. The form:

(1) shall explain a parent's right to review proposed curriculum materials in a timely manner;

(2) shall request the parent's permission to instruct the parent's student in identified course material related to human sexuality or maturation education;

(3) shall allow the parent to exempt the parent's student from attendance for class period(s) while identified course material related to human sexuality or maturation education is presented and discussed;

(4) shall be specific enough to give parents fair notice of topics to be covered;

(5) shall include a brief explanation of the topics and materials to be presented and provide a time, place and contact person for review of the identified curricular materials;

(6) shall be on file with affirmative parent/guardian response for each student prior to the student's participation in discussion of issues protected under Section 53A-13-101; and

(7) shall be maintained at the school for a reasonable period of time.

J. "Professional development" means training in which Utah educators may participate to renew a license, receive information or training in a specific subject area, teach in another subject area or teach at another grade level.

K. "Utah educator" means an individual such as an administrator, teacher, counselor, teacher's assistant, or coach, who is employed by a unit of the Utah public education system and who provides teaching or counseling to students.

L. "Utah Professional Practices Advisory Commission (UPPAC)" means a Commission authorized under 53A-6-301 and designated to review allegations against educators and recommend action against educators' licenses to the Board.

M. "USOE" means the Utah State Office of Education.

R277-474-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-13-101(1)(c)(ii)(B) which directs the Board to develop a rule to allow local boards to adopt human sexuality education materials or programs under Board rules and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purposes of this rule are:

(1) to provide requirements for the Board, LEAs and individual educators to select instructional materials about human sexuality and maturation;

(2) to provide notice to parents/guardians of proposed human sexuality and maturation discussions and instruction; and

(3) to provide direction to public education employees regarding instruction and discussion of maturation and human sexuality with students.

R277-474-3. General Provisions.

A. The following may not be taught in Utah public schools through the use of instructional materials, direct instruction, or online instruction:

(1) the intricacies of intercourse, sexual stimulation or erotic behavior;

(2) the advocacy of premarital or extramarital sexual activity; or

(3) the advocacy or encouragement of the use of contraceptive methods or devices.

B. Educators are responsible to teach the values and information identified under Section 53A-13-101(4).

C. Utah educators shall follow all provisions of federal and state law including parent/guardian notification and prior written parental consent requirements under Sections 76-7-322 and 76-7-323 in teaching any aspect of human sexuality.

R277-474-4. State Board of Education Responsibilities.

The Board shall:

A. develop and provide professional development and assistance with training for educators on law and rules specific to human sexuality instruction and related issues.

B. develop and provide a parental notification form and timelines for use by LEAs.

C. establish a review process for human sexuality instructional materials and programs using the Instructional Materials Commission and requiring final Board approval of the Instructional Materials Commission's recommendations.

D. approve only medically accurate human sexuality instruction programs.

E. receive and track parent and community complaints and

comments received from LEAs related to human sexuality instructional materials and programs.

R277-474-5. LEA Responsibilities.

A. Annually each LEA shall require all newly hired or newly assigned Utah educators with responsibility for any aspect of human sexuality instruction to attend state-sponsored professional development outlining the human sexuality curriculum and the criteria for human sexuality instruction in any courses offered in the public education system.

B. Each LEA shall provide training consistent with R277-474-5A at least once during every three years of employment for Utah educators.

C. Local school boards and local charter boards shall form curriculum materials review committees (committee) at the district or school level as follows:

(1) The committee shall be organized consistent with R277-474-2B.

(2) Each committee shall designate a chair and procedures.

(3) The committee shall review and approve all guest speakers and guest presenters and their respective materials relating to human sexuality instruction in any course and maturation education prior to their presentations.

(4) The committee shall not authorize the use of any human sexuality instructional program or maturation education program not previously approved by the Board, approved consistent with R277-474-6, or approved under Section 53A-13-101(1)(c)(ii).

(5) The district superintendent or charter school administrator shall report educators who willfully violate the provisions of this rule to the Commission for investigation and possible discipline.

(6) The LEA shall use the common parental notification form or a form that satisfies all criteria of the law and Board rules, and comply with timelines approved by the Board.

(7) Each LEA shall develop a logging and tracking system of parental and community complaints and comments resulting from student participation in human sexuality instruction, to include the disposition of the complaints, and provide that information to the USOE upon request.

D. If a student is exempted from course material required by the Board-approved Core Standards consistent with Sections 53A-13-101.2(1), (2) and (3), the school shall:

(1) waive the participation requirement; or

(2) provide a reasonable alternative to the requirement.

R277-474-6. Local Board or Local Charter Board Adoption of Human Sexuality Education and Maturation Education Instructional Materials.

A. A local board may adopt instructional materials under Section 53A-13-101(1)(c)(iii).

B. Materials that are adopted shall comply with the criteria of Section 53A-13-101(1)(c)(iii) and:

(1) shall be medically accurate as defined in R277-474-2H.

(2) shall be approved by a majority vote of the local board members or local charter board members present at a public meeting of the board.

(3) shall be available for reasonable review opportunities to residents of the district or parents/guardians of charter school students prior to consideration for adoption.

C. The LEA shall comply with the reporting requirement of Section 53A-13-101(1)(c)(iii)(D). The report to the Board shall include:

(1) a copy of the human sexuality instructional materials and maturation education materials not approved by the Instructional Materials Commission that the local board or local charter board seeks to adopt;

(2) documentation of the materials' adoption in a public board meeting;

(3) documentation that the materials or program meets the medically accurate criteria of R277-474-2H;

(4) documentation of the recommendation of the materials by the committee; and

(5) a statement of the local board's or local charter board's rationale for selecting materials not approved by the Instructional Materials Commission.

D. The local board's or local charter board's adoption process for human sexuality instructional materials and maturation education materials shall include a process for annual review of the board's decision.

R277-474-7. Utah Educator Responsibilities.

A. Utah educators shall participate in training provided under R277-474-5A.

B. Utah educators shall use the common parental notification form or a form approved by their employing LEA, and timelines approved by the Board.

C. Utah educators shall individually record parent and community complaints, comments, and the educators' responses regarding human sexuality instructional programs.

D. Utah educators may respond to spontaneous student questions for the purposes of providing accurate data or correcting inaccurate or misleading information or comments made by students in class regarding human sexuality.

KEY: schools, sex education
July 10, 2017 **Art X Sec 3**
Notice of Continuation September 15, 2017 **53A-13-101(1)(c)(ii)(B)**
53A-1-401(3)

R277. Education, Administration.
R277-489. Kindergarten Entry and Exit Assessment - Early Intervention Program.
R277-489-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which permits the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law; and

(c) Section 53A-17a-167, which directs the Board to distribute funds appropriated for the early intervention program to LEAs that apply for the funds.

(2) The purpose of this rule is to require LEAs to administer a kindergarten entry and exit assessment and establish criteria and procedures to administer the early intervention program.

R277-489-2. Definitions.

(1) "Early intervention program" means a program that provides additional instruction to kindergarten age students:

(a) as an extended period before or after school, on Saturdays, or during the summer; or

(b) through other means.

(2) "Enrollment" means class enrollment of not more than the student enrollment of other kindergarten classes within the school.

(3) "LEA plan" means the early intervention program plan submitted by an LEA and approved and accepted for funding by the Superintendent.

R277-489-3. Administration of Kindergarten Entry and Exit Assessments.

(1) Except as provided in Subsection (2), an LEA shall administer:

(a) a kindergarten entry assessment, approved by the Superintendent, to each kindergarten student sometime within:

(i) three weeks before the first day of school; and

(ii) three weeks after the first day of school; and

(b) a kindergarten exit assessment, approved by the Superintendent, to each kindergarten student sometime during the four weeks before the last day of school.

(2) A charter school that does not participate in the Early Intervention Program or the K-3 Reading Software Program described in R277-496 is not required to administer the kindergarten entry and exit assessments.

(3) The days used for the assessment shall be consistent with Subsection R277-419-11(3)(e).

(4) An LEA shall submit to the Data Gateway:

(a) kindergarten entry assessment data by September 30; and

(b) kindergarten exit assessment data by June 15.

(5) In accordance with Section R277-114, the Superintendent may recommend action to the Board, including withholding of funds, if an LEA fails to provide complete, accurate, and timely reporting under Subsection (4).

R277-489-4. Use of Kindergarten Entry and Exit Assessment Data.

(1) The Superintendent or an LEA may use entry and exit assessment data obtained in accordance with Section R277-489-3 to:

(a) provide insights into current levels of academic performance upon entry and exit of kindergarten;

(b) identify students in need of early intervention instruction and promote differentiated instruction for all students;

(c) understand the effectiveness of programs, such as extended-day kindergarten and pre-school;

(d) provide opportunities for data data-informed decision making and cost-benefit analysis of early learning initiatives;

(e) identify effective instructional practices or strategies for improving student achievement outcomes in a targeted manner; and

(f) understand the influence and impact of full-day kindergarten on at-risk students in both the short- and long-term.

(2) An LEA may not use entry and exit assessment data obtained in accordance with Section R277-489-3 to:

(a) justify early enrollment of a student who is not currently eligible to enroll in kindergarten, such as a student with a birthday falling after September 1;

(b) evaluate an educator's teaching performance; or

(c) determine whether a student should be retained or promoted between grades.

R277-489-5. Early Intervention Program.

(1) The Superintendent shall accept applications from LEAs for early intervention programs delivered through enhanced kindergarten programs that satisfy the requirements of Section 53A-17a-167 and the provisions of this rule.

(2) The Superintendent shall establish timelines for submission of applications.

(3) An LEA application for early intervention program funds shall include:

(a) the names of schools for which program funds must be used;

(b) a description of the delivery methods that may be used to serve eligible students, such as:

(i) full-day kindergarten;

(ii) two half-days;

(iii) extra hours;

(iv) a summer program; or

(v) other means;

(c) a description of the evidence-based early intervention model used by the LEA;

(d) a description of how the program focuses on age-appropriate literacy and numeracy skills;

(e) a description of how the program targets at-risk students;

(f) a description of the assessment procedures and tools to be used by participating schools within the LEA; and

(g) other information as requested by the Superintendent and approved by the Board.

(4) The Superintendent shall distribute funds to eligible charter schools based on a formula identifying the percentage of students in public schools and the percentage of students with the greatest need for an enhanced kindergarten program consistent with Subsection 53A-17a-167(4)(a).

(5) The Superintendent shall distribute funds to eligible school districts by determining the number of students eligible to receive free lunch in the prior school year for each school district and prorating the remaining funds based on the number of students eligible to receive free lunch in each school district.

(6) The Superintendent shall establish timelines for distribution of early intervention program funds.

(7) The Superintendent shall require all funded programs to submit an annual report.

(8) An LEA may not require a student to participate in an early intervention program.

KEY: early intervention

September 21, 2017	**Art X Sec 3**
Notice of Continuation June 6, 2017	**53A-1-401**
	53A-17a-167

R277. Education, Administration.
R277-496. K-3 Reading Software Licenses.
R277-496-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law; and

(c) Subsections 53A-17a-167(5) through (8), which direct the Board to distribute software licenses for the K-3 reading software program to LEAs that apply for the licenses.

(2) The purpose of this rule is to establish criteria and procedures to administer the K-3 reading software program.

R277-496-2. Definitions.

(1) "Aggregate student population" means the total number of students within a school who are using a technology provider's K-3 reading software licenses.

(2) "Early interactive reading software" or "K-3 reading software license" means technology tools and software that adjust the presentation of educational material according to a student's weaknesses and strengths, as indicated by the student's responses to questions.

(3) "Use early interactive reading software in accordance with a technology provider's dosage recommendations" means when at least 80% of the aggregate student population of a school, by provider, uses a technology provider's K-3 reading software for at least 80% of:

(a) the minimum number of weeks of use recommended by the technology provider for the K-3 reading software program; or

(b) the average number of minutes of use recommended by the technology provider for the K-3 reading software program.

R277-496-3. K-3 Reading Software Licenses.

(1) The Superintendent shall select one or more technology providers through an RFP to provide early interactive reading software for students in kindergarten through grade 3.

(2) A school may apply for early interactive reading software for students in kindergarten through grade 3.

(3) The Superintendent shall accept applications from LEAs for K-3 reading software licenses that satisfy the requirements of Section 53A-17a-167 and the provisions of this rule.

(4) If the number of requests for K-3 reading software licenses exceeds the number of licenses available, the Superintendent shall give priority to:

(a) requests for licenses to be used in Kindergarten or grade 1; or

(b) a school that:

(i) received a K-3 reading license in a previous school year; and

(ii) used the K-3 reading license in accordance with the technology provider's dosage recommendations.

(5) The Superintendent shall establish timelines for submission of applications. (6) A school may not require a student to participate in the K-3 reading software license program.

R277-496-4. School Probationary Re-entry Into the Program.

(1) If a school does not use the K-3 reading software licenses in accordance with the technology provider's dosage recommendations as described in Subsection 53A-17a-167(7)(c), the school may not receive K-3 reading software licenses for one year.

(2) A school described in Subsection (1) may reapply to re-enter the program on a probationary basis and receive K-3 reading software licenses if the school meets the probation requirements of this Section R277-496-4.

(3) A school is on probation if the school:

(a) previously received K-3 reading software licenses;

(b) lost eligibility to participate in the program as described in Subsection 53A-17a-167(7)(c); and

(c) receives K-3 reading software licenses after re-entering the program.

(4)(a) The school principal, instructional leaders, and teachers of a school on probation shall engage in all of the available technology provider support structures and interventions for probationary software programs, including:

(i) data dives;

(ii) professional learning; and

(iii) usage and fidelity updates.

(b) A technology provider shall establish the specific support structure requirements and interventions described in Subsection (4)(a) for the technology provider's software program.

(5) If a technology provider does not offer support structure requirements and interventions as described in Subsection (4), the Superintendent may not make the technology provider's software available for a school that is on probation.

(6) If a school on probation does not use the K-3 reading software licenses in accordance with a technology provider's dosage recommendations during the probationary year, the school may not receive a K-3 reading license for the following year unless the school on probation pays for 50% of the costs of the K-3 reading license software license.

R277-496-5. Reporting.

(1) An LEA receiving K-3 reading software licenses shall provide information that is requested by the Superintendent or external evaluator selected by the Board in conducting the evaluation required in Subsection 53A-17a-167(8).

(2) The Superintendent may recommend action to the Board, including withholding of funds, in accordance with Rule R277-114 for an LEA that fails to provide complete, accurate, and timely reporting as required by this rule.

KEY: reading, software, licenses
September 21, 2017 **Art X Sec 3**
53A-1-401
53A-17a-167(5) through (8)

R277. Education, Administration.
R277-509. Licensure of Student Teachers and Interns.
R277-509-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Cooperating teacher" means a licensed teacher employed by an LEA who is qualified to directly supervise a student teacher or intern during the period the student teacher or intern is assigned to the LEA.

C. "Intern" means a teacher education student, who, in an advanced stage of preparation, usually as a culminating experience, may be employed in a school setting for a period of up to one year and receive salary proportionate to the service rendered. An intern is supervised primarily by the school system but with a continuing relationship with college personnel and following a planned program designed to produce a demonstrably competent professional.

D. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

E. "Student teacher" means a college student preparing to teach who is assigned a period of guided teaching during which the student assumes increasing responsibility for directing the learning of a group or groups of students over a period of time.

R277-509-2. Authority and Purpose.

A. This rule is authorized under Article X, Section 3 of the Utah Constitution which vests general authority and supervision of public education in the Board, Sections 53A-6-104(1) which permit the Board to issue licenses for educators, Section 53A-6-401(3) which directs the Utah State Office of Education to establish a procedure for obtaining and evaluating relevant information about license applicants, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the procedure under which the Board issues licenses to student teachers and interns.

R277-509-3. Issuing Licenses.

A. The Board shall issue Student Teacher or Intern licenses to students enrolled in teacher preparation programs.

B. The Board shall provide a process for timely review by UPPAC of background check information and shall provide adequate due process for student teachers and interns in the licensing process.

(1) The Utah Professional Practices Advisory Commission (UPPAC) shall receive and review background information about student teachers and interns.

(2) Student teachers and interns shall have student teacher licenses issued by the Board prior to assignment in public schools.

(3) UPPAC shall review student teacher license applications and make recommendations for their approval by the Board.

(4) UPPAC shall not recommend student teachers or interns to complete student teaching or intern assignments while student teachers or interns are under court supervision of any kind.

(5) Teacher preparation programs may allow student teachers or interns not approved by UPPAC to complete student teaching or intern hours only if the university provides a constant supervisor for the student teacher's or intern's work in the public schools.

C. A license is issued only to student teachers or interns assigned to elementary, middle, or secondary schools under cooperating teachers for part of their preparation program. A supervising administrator must be permanently assigned to the building to which an intern is assigned.

D. A Student Teacher or Intern license is valid only in the LEA specified and for the period of time indicated on the license.

R277-509-4. LEA Requirements.

A. An LEA may not accept or assign student teachers or interns who do not possess a Utah Student Teacher or Intern license. The service of persons so assigned is not recognized by the Board as fulfilling an intern or student teaching requirement for licensure.

B. It is the responsibility of the LEA to verify that potential student teachers or interns are appropriately licensed.

KEY: student teachers, interns, teacher preparation programs

January 7, 2013	**Art X Sec 3**
Notice of Continuation September 13, 2017	**53A-6-104(1)**
	53A-1-401(3)

R277. Education, Administration.
R277-515. Utah Educator Professional Standards.
R277-515-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Subsection 53A-1-402(1)(a), which directs the Board to make rules regarding the certification of educators;

(c) Title 53A, Chapter 6, Educator Licensing and Professional Practices Act, which provides all laws related to educator licensing and professional practices; and

(d) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) establish statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents;

(b) recognize that licensed public school educators are professionals and, as such, should share common professional standards, expectations, and role model responsibilities; and

(c) distinguish behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.

R277-515-2. Definitions.

(1)(a) "Boundary violation" means crossing verbal, physical, emotional, and social lines that an educator must maintain in order to ensure structure, security, and predictability in an educational environment.

(b) A "boundary violation" may include the following, depending on the circumstances:

(i) isolated, one-on-one interactions with students out of the line of sight of others;

(ii) meeting with students in rooms with covered or blocked windows;

(iii) telling risqué jokes to, or in the presence of a student;

(iv) employing favoritism to a student;

(v) giving gifts to individual students;

(vi) educator initiated frontal hugging or other uninvited touching;

(vii) photographing individual students for a non-educational purpose or use;

(viii) engaging in inappropriate or unprofessional contact outside of educational program activities;

(ix) exchanging personal email or phone numbers with a student for a non-educational purpose or use;

(x) interacting privately with a student through social media, computer, or handheld devices; and

(xi) discussing an educator's personal life or personal issues with a student.

(c) "Boundary violations" does not include:

(i) offering praise, encouragement, or acknowledgment;

(ii) offering rewards available to all who achieve;

(iii) asking permission to touch for necessary purposes;

(iv) giving pats on the back or a shoulder;

(v) giving side hugs;

(vi) giving handshakes or high fives;

(vii) offering warmth and kindness;

(viii) utilizing public social media alerts to groups of students and parents; or

(ix) contact permitted by an IEP or 504 plan.

(2) "Core Standard" means a statement:

(a) of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course; and

(b) established by the Board in Rule R277-700 as required by Section 53A-1-402.

(3) "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.

(4)(a) "Educator" or "professional educator" means a person who currently holds a Utah educator license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

(b) "Professional educator" does not include a paraprofessional, a volunteer, or an unlicensed teacher in a classroom.

(5) "Illegal drug" means a substance included in:

(a) Schedules I, II, III, IV, or V established in Section 58-37-4;

(b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, Pub. L. No. 91-513; or

(c) any controlled substance analog.

(6) Grooming" means befriending and establishing an emotional connection with a child or a child's family to lower the child's inhibitions for emotional, physical, or sexual abuse.

(7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(8) "License applicant" means a person who is applying for:

(a) an initial license; or

(b) renewal of a license.

(9) "Licensing discipline" means a sanction, including an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measure, for violation of a professional educator standard.

(10) "Misdemeanor offense," for purposes of this rule, does not include Class C or lower violations of Title 41, Utah Motor Vehicle Code

(11) "Plea in abeyance" means a plea of guilty or no contest that is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.

(12) "School-related activity" means any event, activity, or program:

(a) occurring at the school before, during, or after school hours; or

(b) that a student attends at a remote location as a representative of the school or with the school's authorization, or both.

(13) "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.

(14) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established by Section 53A-6-301.

(15) "Weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.

(1) The professional educator is responsible for compliance with federal, state, and local laws.

(2) The professional educator shall familiarize himself or herself with professional ethics and is responsible for compliance with applicable professional standards.

(3) Failing to strictly adhere to Subsection (4) shall result in licensing discipline.

(4) The professional educator, upon receiving a Utah

educator license:

(a) may not be convicted of any felony or misdemeanor offense that adversely affects the individual's ability to perform an assigned duty and carry out the responsibilities of the profession, including role model responsibility;

(b) may not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;

(c) may not commit any act of cruelty to a child or any criminal offense involving a child;

(d) may not be convicted of a stalking crime;

(e) may not possess or distribute an illegal drug or be convicted of any crime related to an illegal drug, including a prescription drug not specifically prescribed for the individual;

(f) may not engage in conduct of a sexual nature described in Section 53A-6-405;

(g) may not be subject to a diversion agreement specific to a sex-related or drug-related offense, plea in abeyance, court-imposed probation, or court supervision related to a criminal charge that could adversely impact the educator's ability to perform the duties and responsibilities of the profession;

(h) may not provide to a student or allow a student under the educator's supervision or control to consume an alcoholic beverage or unauthorized drug;

(i) may not attend school or a school-related activity in an assigned supervisory capacity while possessing, using, or under the influence of alcohol or an illegal drug;

(j) may not intentionally exceed the prescribed dosage of a prescription medication while at school or a school-related activity;

(k) shall cooperate in providing all relevant information and evidence to the proper authority in the course of an investigation by a law enforcement agency or by the Division of Child and Family Services regarding potential criminal activity, except that an educator may decline to give evidence against himself or herself in an investigation if the evidence may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(l) shall report suspected child abuse or neglect to law enforcement or the Division of Child and Family Services pursuant to Sections 53A-6-502 and 62A-4a-409 and comply with rules and LEA policy regarding the reporting of suspected child abuse;

(m) shall strictly adhere to state laws regarding the possession of a firearm while on school property or at a school-sponsored activity and enforce an LEA policy related to student access to or possession of a weapon;

(n) may not solicit, encourage, or consummate an inappropriate relationship, whether written, verbal, or physical, with a student or minor;

(o) may not engage in grooming of a student or minor;

(p) may not:

(i) participate in sexual, physical, or emotional harassment towards any public school-age student or colleague; or

(ii) knowingly allow harassment toward a student or colleague;

(q) may not make inappropriate contact in any communication, including written, verbal, or electronic, with a minor, student, or colleague, regardless of age or location;

(r) may not interfere or discourage a student's or colleague's legitimate exercise of political and civil rights, acting consistent with law and LEA policy;

(s) shall provide accurate and complete information in a required evaluation of himself or herself, another educator, or student, as directed, consistent with the law;

(t) shall be forthcoming with accurate and complete information to an appropriate authority regarding known educator misconduct that could adversely impact performance of a professional responsibility, including a role model responsibility, by himself or herself, or another;

(u) shall provide accurate and complete information required for licensure, transfer, or employment purposes;

(v) shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure;

(w) shall notify the Superintendent at the time of application for licensure of past license disciplinary action or license discipline from another jurisdiction;

(x) shall notify the Superintendent honestly and completely of past criminal convictions at the time of the license application and renewal of licenses; and

(y) shall provide complete and accurate information during an official inquiry or investigation by LEA, state, or law enforcement personnel.

(5) An LEA shall report violations described in Subsection (4) to UPPAC.

(6)(a) Failure to adhere to this Subsection (6) may result in licensing discipline.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) An educator may not:

(i) exclude a student from participating in any program or deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious belief, physical or mental condition, family, social, or cultural background, or sexual orientation; and

(ii) may not engage in conduct that would encourage a student to develop a prejudice on the grounds described in Subsection (6)(c)(i) or any other, consistent with the law.

(d) An educator shall maintain confidentiality concerning a student unless revealing confidential information to an authorized person serves the best interest of the student and serves a lawful purpose, consistent with:

(i) Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act; and

(ii) the Federal Family Educational Rights and Privacy Acts, 20 U.S.C. Sec. 1232g and 34 CFR Part 99.

(e) Consistent with Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Section 53A-1-402.5, and rule, a professional educator:

(i) may not accept a bonus or incentive from a vendor or potential vendor or a gift from a parent of a student, or a student where there may be the appearance of a conflict of interest or impropriety;

(ii) may not accept or give a gift to a student that would suggest or further an inappropriate relationship;

(iii) may not accept or give a gift to a colleague that is inappropriate or furthers the appearance of impropriety;

(iv) may accept a donation from a student, parent, or business donating specifically and strictly to benefit a student;

(v) may accept, but not solicit, a nominal appropriate personal gift for a birthday, holiday, or teacher appreciation occasion, consistent with LEA policy and Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(vi) may not use the educator's position or influence to:

(A) solicit a colleague, student, or parent of a student to purchase equipment, supplies, or services from the educator or participate in an activity that financially benefits the educator unless approved in writing by the LEA; or

(B) promote an athletic camp, summer league, travel opportunity, or other outside instructional opportunity from which the educator receives personal remuneration and that involve students in the educator's school system, unless approved in writing consistent with LEA policy and rule; and

(vii) may not use school property, a facility, or equipment for personal enrichment, commercial gain, or for personal uses

without express supervisor permission.

R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.

(1) A professional educator maintains a positive and safe learning environment for a student and works toward meeting an educational standard required by law.

(2)(a) Failure to strictly adhere to this Subsection (2) shall result in licensing discipline.

(b) The professional educator, upon receiving a Utah educator license:

(i) shall take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

(ii) shall resolve a disciplinary problem according to law, LEA policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;

(iii) shall supervise a student appropriately at school and a school-related activity, home or away, consistent with LEA policy and building procedures and the age of the students;

(iv) shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety, or learning;

(v)(A) shall demonstrate honesty and integrity by strictly adhering to all state and LEA instructions and protocols in managing and administering a standardized test to a student consistent with Section 53A-1-608 and Rule R277-404;

(B) shall cooperate in good faith with a required student assessment;

(C) shall submit and include all required student information and assessments, as required by statute and rule; and

(D) shall attend training and cooperate with assessment training and assessment directives at all levels;

(vi) may not use or attempt to use an LEA computer or information system in violation of the LEA's acceptable use policy for an employee or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility; and

(vii) may not knowingly possess, while at school or any school-related activity, any pornographic material in any form.

(3) An LEA shall report violations of Subsection (2) to UPPAC.

(4)(a) Failure to adhere to this Subsection (4) may result in licensing discipline.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) A professional educator:

(i) shall demonstrate respect for a diverse perspective, idea, and opinion and encourage contributions from a broad spectrum of school and community sources, including a community whose heritage language is not English;

(ii) shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;

(iii) shall maintain a positive and safe learning environment for a student;

(iv) shall make appropriate use of technology by:

(A) involving students in social media responsibly, transparently, and primarily for purposes of teaching and learning per school and district policy;

(B) maintaining separate professional and personal virtual profiles;

(C) respecting student privacy on social media; and

(D) taking appropriate and reasonable measures to maintain confidentiality of student information and education records stored or transmitted through the use of electronic or computer technology;

(v) shall work toward meeting an educational standard required by law;

(vi) shall teach the objectives contained in a Core Standard;

(vii) may not distort or alter subject matter from a Core Standard in a manner inconsistent with the law;

(viii) shall use instructional time effectively consistent with LEA policy; and

(ix) shall encourage a student's best effort in an assessment.

R277-515-5. Professional Educator Responsibility for Compliance with LEA Policy.

(1)(a) Failure to strictly adhere to this Subsection (1) shall result in licensing discipline.

(b) A professional educator:

(i) understands, respects, and does not violate appropriate boundaries:

(A) established by ethical rules and school policy and directive in teaching, supervising, and interacting with a student or colleague; and

(B) described in Subsection R277-515-2(1); and

(ii) shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with LEA policy.

(2) An LEA shall report violations of Subsection (1) to UPPAC.

(3)(a) Failure to adhere to this Subsection (3) may result in licensing discipline.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) understands and follows a rule and LEA policy;

(ii) understands and follows a school or administrative policy or procedure;

(iii) resolves a grievance with a student, colleague, school community member, and parent professionally, with civility, and in accordance with LEA policy; and

(iv) follows LEA policy for collecting money from a student, accounting for all money collected, and not commingling any school funds with personal funds.

R277-515-6. Professional Educator Conduct.

(1) A professional educator exhibits integrity and honesty in relationships with an LEA administrator or personnel.

(2)(a) Failure to adhere to this Subsection (2) may result in licensing discipline.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) shall communicate professionally and with civility with a colleague, school and community specialist, administrator, and other personnel;

(ii) shall maintain a professional and appropriate relationship and demeanor with a student, colleague, school community member, and parent;

(iii) may not promote a personal opinion, personal issue, or political position as part of the instructional process in a manner inconsistent with law;

(iv) shall express a personal opinion professionally and responsibly in the community served by the school;

(v) shall comply with an LEA policy, supervisory directive, and generally-accepted professional standard regarding appropriate dress and grooming at school and at a school-related event;

(vi) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;

(vii) shall honor all contracts for a professional service;

(viii) shall perform all services required or directed by the educator's contract with the LEA with professionalism consistent with LEA policy and rule; and

(ix) shall recruit another educator for employment in another position only within a LEA timeline and guideline.

R277-515-7. Violations of Professional Ethics.

(1) This rule establishes standards of ethical decorum and behavior for licensed educators in the state.

(2) Beginning in the 2018-19 school year, to obtain a license or renew a license issued by the Board, a license applicant shall review this rule and execute a form as part of the licensure or renewal process verifying that the educator:

(a) has read R277-515 and R277-516; and

(b) understands that the educator's conduct is governed by R277-515 and R277-516.

(3) An LEA shall:

(a) annually train educators employed by the LEA on the Utah Educator Professional Standards described in Rules R277-515 and R277-516; and

(b) provide written assurance of the training described in Subsection (3)(a) in accordance with R277-108.

(4) Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against a professional educator.

(5) The Board and Superintendent shall adhere to the provisions of this rule in licensing and disciplining a licensed Utah educator.

(6) Reporting and employment provisions related to professional ethics are provided in:

(a) Section 53A-15-1507;

(b) Section 53A-6-501;

(c) Section 53A-11-403; and

(d) Section R277-516-7.

KEY: educators, professional, standards
September 21, 2017 **Art X Sec 3**
Notice of Continuation November 15, 2012 **53A-1-402(1)(a)**
53A-6
53A-1-401

R277. Education, Administration.
R277-516. Professional Standards and Training for Non-licensed Employees and Volunteers.
R277-516-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b)(i) Subsections 53A-1-301(3)(a) and 53A-1-301(3)(d)(x), which instruct the Superintendent to perform duties assigned by the Board that include:

(ii) presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes:

(A) investigation of all matters pertaining to the public schools; and

(B) statistical and financial information about the school system which the Superintendent considers pertinent;

(c) Subsections 53A-1-402(1)(a)(i) and (iii), which direct the Board to:

(i) establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services; and

(ii) the evaluation of instructional personnel; and

(d) Title 53A, Chapter 15, Part 15, Background Checks, which directs the Board to require educator license applicants to submit to background checks and provide ongoing monitoring of licensed educators.

(2) The purpose of this rule is to ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53A-11-102, are instructed and served by public school teachers and employees who have not violated laws that would endanger students in any way.

R277-516-2. Definitions.

(1) "Association" means the same as that term is defined in Subsection 53A-1-1601(3).

(2) "Charter school governing board" means a board designated by a charter school to make decisions for the operation of the charter school.

(3) "Charter school board member" means a current member of a charter school governing board.

(4) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators, which includes information such as:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history;

(e) professional development information;

(f) completion of employee background checks; and

(g) a record of disciplinary action taken against the educator.

(5) "Contract employee" means an employee of a staffing service who works at a public school under a contract between the staffing service and the public school.

(6) "DPS" means the Department of Public Safety.

(7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(8)(a) "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, Board employees, and school district specialists).

(b) A licensed educator may or may not be employed in a position that requires an educator license.

(c) A licensed educator includes an individual who:

(i) is student teaching;

(ii) is in an alternative route to licensing program or position; or

(iii) holds an LEA-specific competency-based license.

(9) "Non-licensed public education employee" means an employee of a an LEA who:

(a) does not hold a current Utah educator license issued by the Board under Title 53A, Chapter 6, Educator Licensing and Professional Practices; or

(b) is a contract employee.

(10) "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.

(11) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.

(12) "Volunteer" means a volunteer who may be given significant unsupervised access to children in connection with the volunteer's assignment.

R277-516-3. Licensed Public Education Employee Personal Reporting of Arrests.

(1) A licensed educator who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director or designee:

(a) any matters involving an alleged sex offense;

(b) any matters involving an alleged drug-related offense;

(c) any matters involving an alleged alcohol-related offense;

(d) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;

(e) any matters involving an alleged felony offense under Title 76, Chapter 6, Offenses Against Property;

(f) any matters involving an alleged crime of domestic violence under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; and

(g) any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in Subsections (a) through (f).

(2) A licensed educator shall report convictions, including pleas in abeyance and diversion agreements within 48 hours or as soon as possible upon receipt of notice of the conviction, plea in abeyance or diversion agreement.

(3) An LEA superintendent, director, or designee shall report conviction, arrest or offense information received from a licensed educator to the Superintendent within 48 hours of receipt of information from a licensed educator.

(4) The Superintendent shall develop an electronic reporting process on the Board's website.

(5) A licensed educator shall report for work following an arrest and provide notice to the licensed educator's employer unless directed not to report for work by the employer, consistent with school district or charter school policy.

R277-516-4. Non-licensed Public Education Employee, Volunteer, and Charter School Board Member Background Check Policies.

(1) An LEA shall adopt a policy for non-licensed public education employee, volunteer, and charter school board member background checks that includes at least the following components:

(a) a requirement that the individual submit to a background check and ongoing monitoring through registration

with the systems described in Section 53A-15-1505 as a condition of employment or appointment; and

(b) identification of the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA only receives notifications for individuals with whom the LEA maintains an authorizing relationship.

(2) An LEA policy shall describe the background check process necessary based on the individual's duties.

R277-516-5. Non-licensed Public Education Employee, Volunteer, or Charter School Board Member Arrest Reporting Policy Required from LEAs.

(1) An LEA shall have a policy requiring a non-licensed public employee, a volunteer, a charter school board member, or any other employee who drives a motor vehicle as an employment responsibility, to report offenses specified in Subsection (3).

(2) An LEA shall post the policy described in Subsection (1) on the LEA's website.

(3) An LEA's policy described in Subsection (1) shall include the following minimum components:

(a) reporting of the following:

(i) convictions, including pleas in abeyance and diversion agreements;

(ii) any matters involving arrests for alleged sex offenses;

(iii) any matters involving arrests for alleged drug-related offenses;

(iv) any matters involving arrests for alleged alcohol-related offenses; and

(v) any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.

(b) a timeline for receiving reports from non-licensed public education employees;

(c) immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;

(d) immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;

(e) adequate due process for the accused employee consistent with Section 53A-15-1506;

(f) a process to review arrest information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees and charter school board members; and

(g) timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees and charter school board members.

(4) An LEA shall ensure that the records described in R277-516-5(3)(g):

(a) include final administrative determinations and actions following investigation; and

(b) are maintained:

(i) only as necessary to protect the safety of students; and

(ii) with strict requirements for the protection of confidential employment information.

R277-516-6. Association Professional Standard Setting, Training, and Monitoring.

(1) Beginning with the 2017-2018 school year, a public school may not be a member of, or pay dues to an association that adopts rules or policies that are inconsistent with this R277-516-6.

(2) An association shall establish policies or rules that require:

(a) coaches and individuals who oversee interscholastic activities or work with students as part of an interscholastic activity to meet a set of professional standards that are consistent with the Utah Educator Professional Standards described in Rule R277-515; and

(b) the association or public school to annually train each coach or other individual who oversees or works with students as part of an interscholastic activity of a public school on the following:

(i) child sexual abuse prevention as described in Section 53A-13-112;

(ii) the prevention of bullying, cyber-bullying, hazing, harassment, and retaliation as described in:

(A) Title 53A, Chapter 11a, Bullying and Hazing; and

(B) R277-613; and

(iii) the professional standards described in Subsection (2)(a).

(3) An association shall establish procedures and mechanisms to:

(a) monitor LEA compliance with the association's training requirements described in Subsection (2); and

(b) track the employment history of individuals who receive a certification from the association.

R277-516-7. Public Education Employer Responsibilities Upon Receipt of Arrest Information.

(1) A public education employer that receives arrest information about a licensed public education employee shall review the arrest information and assess the employment status consistent with Section 53A-6-501, Rule R277-515, and the LEA's policy.

(2) A public education employer that receives arrest information about a non-licensed public education employee, volunteer, or charter school board member shall review the arrest information and assess the individual's employment or appointment status:

(a) considering the individual's assignment and duties; and

(b) consistent with a local board-approved policy for ethical behavior of non-licensed employees, volunteers, and charter school board members.

(3) A local board shall provide appropriate training to non-licensed public education employees, volunteers, and charter school board members about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public education employees, volunteers, and charter school board members.

(4) A public education employer shall cooperate with the Superintendent in investigations of licensed educators.

R277-516-8. Misconduct Notification Requirements and Procedures.

(1)(a) An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school's employee shall immediately report that belief to:

(i) law enforcement;

(ii) the school principal; and

(iii) to any other entity to which a report is required by law.

(b) A school administrator who receives a report described in Subsection (1)(a) shall immediately submit the information to UPPAC if the employee is licensed as an educator.

(2) A local superintendent or charter school director shall notify UPPAC if an educator is determined, pursuant to an administrative or judicial action, or internal LEA investigation, to have had disciplinary action taken for, or, to have engaged in:

(a) unprofessional conduct or professional incompetence that:

(i) results in suspension for more than one week or termination;

(ii) requires mandatory licensing discipline under R277-

515; or

(iii) otherwise warrants UPPAC review; or

(b) immoral behavior.

(3) An educator who fails to comply with Subsection (1) may:

(a) be found guilty of unprofessional conduct; and

(b) have disciplinary action taken against the educator.

(4) The Superintendent may withhold, reduce, or terminate funding to an LEA for failure to make a required report under this R277-516 through the process described in Rule R277-114.

KEY: background checks, school employees, self reporting
September 21, 2017 **Art X Sec 3**
Notice of Continuation July 19, 2017 **53A-1-301(3)(a)**
53A-1-301(3)(d)(x)
53A-1-402(1)(a)(i)
53A-1-402(1)(a)(iii)

R277. Education, Administration.
R277-522. Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.
R277-522-1. Definitions.

A. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1L.

B. "Board" means the Utah State Board of Education.

C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means a database that maintains public information on licensed Utah educators.

D. "Educational Testing Services (ETS)" is an educational measurement institution that has developed standard-based teacher assessment tests.

E. "Entry years" means the three years a beginning teacher holds a Level 1 license.

F. "INTASC" means the Interstate New Teacher Assessment and Support Consortium, that has established Model Standards for Beginning Teacher Licensing and Development. The ten principles reflect what beginning teachers should know and be able to do as a professional teacher. The Board has adopted these principles as part of the NCATE standards.

G. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met ancillary requirements established by law or rule.

H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule;

(2) three years of successful education experience within a five-year period; and

(3) satisfaction of requirements under R277-522 for teachers employed after January 1, 2003.

I. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school.

J. "Mentor" means a Level 2 or Level 3 educator, who is trained to advise and guide Level 1 teachers.

K. "Praxis II - Principles of Learning and Teaching" is a standards-based test provided by ETS and designed to assess a beginning teacher's pedagogical knowledge. This test is used by many states as part of their teacher licensing process. Colleges and universities use this test as an exit exam from teacher education programs.

L. "Professional development" means locally or Board-approved education-related training or activities that enhance an educator's background consistent with R277-501, Educator License Renewal.

M. "Teaching assessment/evaluation" means an observation of a Level 1 teacher's instructional skills by a school district or school administrator using an evaluation tool based on or similar to INTASC principles.

N. "Working portfolio" means a collection of documents prepared by a Level 1 teacher and used as a tool for evaluation.

O. "USOE" means the Utah State Office of Education.

R277-522-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board; by Section 53A-9-103(5) which directs career ladder programs to include a program of evaluation and mentoring for beginning teachers designed to assist those beginning teachers in developing the skills required of capable teachers; Section 53A-6-102(2)(a)(iii) which finds that the implementation of progressive strategies regarding induction, professional development and evaluation are essential in creating successful teachers; Section 53A-6-106 which directs the Board to establish a rule for the training and experience required of license applicants for teaching; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to outline required entry years enhancements of professional and emotional support for Level 1 teachers whose employment or reemployment in the Utah public schools began after January 1, 2003. The requirements apply to teachers during their first three years of teaching and include mentoring, testing, assessment/evaluation, and developing a professional portfolio. The purpose of these enhancements is to develop in Level 1 teachers successful teaching skills and strategies with assistance from experienced colleagues.

R277-522-3. Required Entry Year Enhancements Requirements for a Level 1 Teacher to Advance to a Level 2 License.

A. Level 1 teachers shall satisfactorily collaborate with a trained mentor, pass a required pedagogical exam, complete three years of employment and evaluation, and compile a working portfolio.

B. Collaboration with an assigned mentor:

(1) A mentor shall be assigned to each Level 1 teacher in the first semester of teaching:

(a) The beginning teacher shall be assigned a trained mentor teacher by the principal to supervise and act as a resource for the entry level teacher.

(b) The mentor teacher shall teach in the same school, and where feasible, in the same subject area as the Level 1 teacher.

(2) Qualification of a mentor:

(a) A mentor shall hold a Utah Professional Educator's Level 2 or 3 license;

(b) A mentor shall have completed a mentor training program including continuing professional development.

(3) A mentor shall:

(a) guide Level 1 teachers to meet the procedural demands of the school and school district;

(b) provide moral and emotional support;

(c) arrange for opportunities for the Level 1 teacher to observe teachers who use various models of teaching;

(d) share personal knowledge and expertise about new materials, planning strategies, curriculum development and teaching methods;

(e) assist the Level 1 teacher with classroom management and discipline;

(f) support Level 1 teachers on an ongoing basis;

(g) help Level 1 teachers understand the implications of student diversity for teaching and learning;

(h) engage the Level 1 teacher in self-assessment and reflection; and

(i) assist with development of Level 1 teacher's portfolio.

C. Passage of a pedagogical examination:

(1) The Praxis II - Principles of Learning and Teaching

(a) shall be administered by ETS;

(b) shall be taken by the beginning teacher; the beginning teacher shall earn a qualifying score of at least 160;

(c) may be taken successive times.

(2) Results shall be posted on CACTUS.

D. Successful evaluation under a school district employment and assessment/evaluation program:

(1) Teachers shall be fully employed for three years in

Utah public schools or in accredited private schools.

(2) Employing school districts may, following evaluation of the individual's experience, determine that teaching experience outside of the Utah public schools satisfies the teaching/experience requirement of this rule.

(3) The school district has discretion in determining the employment or reemployment status of individuals.

(4) Employing school districts shall be responsible for the evaluation; this duty may be assigned to the school principal.

(5) The assessment/evaluation shall take place at least twice during the first year of teaching and at least twice during each of the following two years with a satisfactory final evaluation.

E. Compilation of a working portfolio:

(1) The portfolio shall be reviewed and evaluated by the employing school district.

(2) the portfolio may be reviewed by USOE staff upon request during the Level 1 teacher's second year of teaching.

(3) the portfolio shall be based upon INTASC principles; and may:

(a) include teaching artifacts;

(b) include notations explaining the artifacts; and

(c) include a reflection and self-assessment of his or her own practice; or

(d) be interpreted broadly to include the employing school district's requirement of samples of the first year teaching experience.

R277-522-4. Satisfaction of Entry Years Enhancements.

A. If a Level 1 teacher fails to complete all enhancements as enumerated in this rule, the Level 1 teacher shall remain in a provisional employment status until the Level 1 teacher completes the enhancements.

(1) The school district may make a written request to the USOE Educator Licensing Section for a one year extension of the Level 1 license in order to provide time for the educator to satisfy entry years enhancements.

(2) The Level 1 teacher may repeat some or all of the entry years enhancements.

(3) An opportunity to repeat or appeal an incomplete or unsatisfactory entry years enhancements process shall be designed and offered by the employing school district.

B. Recommendation for a Level 2 license:

(1) Each school district shall make an annual recommendation to the Board of teachers approved in its schools to receive a Level 2 license, including documentation demonstrating completion of the enhancements.

(2) The names of teachers who did not successfully complete entry years enhancements may also be reported to the Board annually by school districts.

C. The Board shall receive an annual report tracking the success of retention and the job satisfaction of Utah educators who complete the entry years enhancement program.

KEY: teachers
July 16, 2004 **Art X Sec 3**
Notice of Continuation September 13, 2017 **53A-9-103(5)**
53A-6-102(2)(a)(iii)
53A-6-106
53A-1-401(3)

R277. Education, Administration.
R277-608. Prohibition of Corporal Punishment in Utah's Public Schools.
R277-608-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Sections 53A-11-801 through 53A-11-805, which provide guidelines for the use of reasonable and necessary physical restraint or force in educational settings.

(2) The purpose of this rule is to direct LEAs to have policies in place that prohibit corporal punishment consistent with the law.

R277-608-2. Definitions.

(1) "Corporal punishment" means the intentional infliction of physical pain upon the body of a minor child as a disciplinary measure.

(2) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

R277-608-3. Reporting Requirements.

(1) Each LEA shall incorporate in the LEA plan submitted to the Superintendent annually, the prohibition of corporal punishment consistent with the law.

(2) An LEA policy shall include:

(a) a prohibition of corporal punishment consistent with the law;

(b) criteria and procedures for using appropriate behavior reduction intervention in accordance with federal and state law;

(c) appropriate sanctions for LEA employees who use corporal punishment; and

(d) appeal procedures for LEA employees disciplined for a violation of the LEA's policy.

KEY: students' rights, disciplinary problems, teachers
September 21, 2017 Art X Sec 3
Notice of Continuation July 19, 2017 53A-1-401
53A-11-801 through 805

R277. Education, Administration.
R277-800. Utah Schools for the Deaf and the Blind.
R277-800-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-25b-201 which authorizes the Board to make rules regarding the administration of the Utah Schools for the Deaf and the Blind;

(c) Subsection 53A-25b-201(3), which directs the Board to appoint Advisory Council members;

(d) Section 53A-25b-302, which directs the Board to establish entrance policies and procedures to be considered, consistent with the IDEA, for student placement recommendations at the USDB;

(e) Section 53A-25b-501, which directs the Board to establish the USIMAC and outline collaboration and operating procedures for USIMAC and USDB resources; and

(f) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide standards and procedures for the operation of the USDB and the USDB outreach programs and services.

R277-800-2. Definitions.

(1) "Accessible media producer" means a company or agency that creates fully-accessible, specialized, student-ready formats for curriculum materials, such as:

(a) Braille;

(b) large print;

(c) audio books; or

(d) digital books.

(2) "Advisory Council" means the Advisory Council for the Utah Schools for the Deaf and the Blind appointed by the Board in accordance with Subsection 53A-25b-201(3) and Section R277-800-4.

(3)(a) "Assessment" means the process of documenting, usually in measurable terms, knowledge, skills, attitudes and abilities pertaining to the fields of vision and hearing.

(b) An assessment may include the following areas of focus:

(i) a valid, reliable and appropriate assessment given to determine eligibility for placement and services by a team of qualified professionals and a student's parent or guardian;

(ii) a functional assessment accomplished by observation and measurement of daily living skills and functional use of vision or hearing, or both; and

(iii) academic evaluations as part of the Utah Performance Assessment System for Students (U-PASS), including an alternate assessment with appropriate accommodations as indicated on a student's IEP.

(4)(a) "Campus-based program" means a program provided by USDB that offers an alternative to an outreach program for students, ages three to 22, who are blind or visually impaired, deaf or hard of hearing, or deafblind.

(b) Under a campus-based program, services are provided by qualified USDB staff at a USDB site.

(5)(a) "The Chafee Amendment to the Copyright Act" or the "Chafee Amendment" is a federal law, 17 U.S.C. 121, that allows an authorized entity to reproduce or distribute copyrighted materials in specialized formats for students who are blind or have other print disabilities without the need to obtain permission of the copyright owner.

(b) Authorized entities under the Chafee Amendment include governmental or nonprofit organizations that have a primary mission to provide copyrighted works in specialized formats for students who are blind or have other print disabilities.

(6) "Child Find" means activities and strategies designed to locate, evaluate, and identify individuals eligible for services under the IDEA.

(7) "Consultation" means a meeting for discussion or seeking advice.

(8) "Designated LEA" means the local education agency assigned by a student's IEP or Section 504 team to have primary responsibility for ensuring that all rights and requirements regarding individual student assessment, eligibility services and procedural safeguards are satisfied consistent with the IDEA.

(9) "Deafblindness" or "deafblind" means written verification provided by a medical professional stating that an individual has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

(10) "Deafness" is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

(11) "Educational Resource Center" or "ERC" is a center under the direction of the USDB that:

(a) provides information, technology, and instructional materials to assist children who are deaf, hard of hearing, blind, visually impaired, and deafblind in progressing in the curriculum; and

(b) facilitates access to materials, information, and training for teachers and parents of children who are deaf, hard of hearing, blind, visually impaired, and deafblind.

(12) "Extension classroom" means a classroom provided by an LEA where USDB provides a full-time classroom teacher and related services to students who remain enrolled in the LEA's general education programs.

(13) "Hearing loss" is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance, but that is not included under the definition of deafness.

(14) "National Instructional Materials Access Center" or "NIMAC" is a central national repository that receives file sets in the NIMAS from publishers to maintain, catalogue, and house for future reference file sets for states to use with students who have print disabilities and require accessible alternate formats.

(15) "National Instructional Materials Accessibility Standard" or "NIMAS" means the electronic standard that enables all producers of alternate formats for students with print disabilities to work from one standard format available from publishers for this purpose.

(16)(a) "Outreach program" is a program provided by the USDB that offers an alternative to a campus-based program for students ages three to 22 who are blind or visually impaired, deaf or hard of hearing, or deafblind.

(b) In an outreach program, services are provided at a student's resident school or at a designated school by a qualified teacher of the blind or visually impaired, deaf or hard of hearing, or deafblind.

(17)(a) "Related services" means those supportive services that are necessary for the appropriate implementation of an IEP.

(b) Related services may include, but are not limited to:

(i) speech pathology;

(ii) audiology;

(iii) low vision services;

(iv) orientation and mobility;

(v) school counseling;

(vi) transportation;

(vii) school nursing services;

(viii) occupational therapy; or

(ix) physical therapy.

(18) "Section 504 accommodation plan" means a plan required by Section 504 of the Rehabilitation Act of 1973, which is designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(19) "Technical assistance" means assistance to public education employees, licensed educators, parents, and families in significant areas of need by someone who has the expertise necessary to give council and training in designated areas.

(20) "USDB" means the Utah Schools for the Deaf and the Blind.

(21) "Utah State Instructional Materials Access Center" or "USIMAC" means a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities.

(22)(a) "Visual impairment," is an impairment in vision that, even with correction, adversely affects a student's educational performance.

(b) "Visual impairment" includes both partial sight and blindness that adversely affect a student's educational performance.

(23) "Weighted pupil unit" or "WPU" means the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-800-3. Operation of USDB.

(1) Consistent with Section 53A-25b-201, the Board is the governing board of the USDB.

(2) The USDB superintendent, appointed consistent with Section 53A-25b-201(2), is subject to the direction of the Board and the Superintendent.

(3) The USDB superintendent shall serve subject to the following:

(a) the USDB superintendent's term of office is for two years and until a successor is appointed;

(b) the Board shall set the USDB superintendent's compensation for services;

(c) the USDB superintendent shall have, at a minimum, an annual evaluation, as directed by the Board;

(d) the USDB superintendent qualifications shall be established by the Board; and

(e) the duties of the USDB superintendent shall be established by the Board.

(4) The Superintendent shall support, provide assistance, and work cooperatively with the USDB in providing services to designated Utah students.

(5) The Superintendent shall assign a liaison to provide appropriate supervision to the USDB to ensure compliance with the law.

(6) The Superintendent shall assist the USDB, its superintendent, and associate superintendents in adopting policies and preparing an annual budget that are consistent with the law.

(7) The Board shall approve the annual budget and expenditures of USDB.

(8)(a) The USDB superintendent shall, subject to the approval of the Board, appoint an associate superintendent to administer the Utah School for the Deaf and an associate superintendent to administer the Utah School for the Blind.

(b) Qualifications of a USDB associate superintendent shall be aligned with the requirements of Section 53A-25b-201.

(9)(a) The USDB superintendent and associate superintendents may hire staff and teachers as needed for the USDB.

(b) Educators and related service providers shall be appropriately licensed and credentialed for their specific assignments.

(10) In employment practices and decisions, the USDB and the USDB superintendent shall maintain the accreditation of the USDB school and programs.

(11) The USDB superintendent and associate superintendents shall communicate regularly and effectively with the Board and provide a written report to the Board at least annually in adequate time prior to the November legislative interim meeting, or at such other time as requested by the Board.

(12) The USDB report shall contain:

(a) a financial report;

(b) a report on the activities of the superintendent and associate superintendents;

(c) a report on activities to involve parents and constituency, including LEA personnel and advocacy groups, in the governance of the school and implementation of service delivery plans for students who are deaf, hard of hearing, blind, visually impaired, and deafblind; and

(d) a report on student achievement, including student achievement data, that provides:

(i) longitudinal data for both current and previous students served by USDB;

(ii) graduation rates; and

(iii) students exiting USDB and their educational placements after exiting.

(13) USDB shall ensure that each child or student served by USDB is assigned a unique student identifier (SSID) to allow for annual data collection and reporting of achievement of current and past students.

(14) USDB shall provide the Superintendent with a listing of past and current children or students, including the assigned unique student identifier, served by USDB by September 1 of each year to facilitate the required data collection.

R277-800-4. USDB Advisory Council and Community Council.

(1) The Board shall establish the Advisory Council for USDB and appoint Advisory Council members as directed in Section 53A-25b-201.

(2) The Advisory Council shall have not more than 11 Board-appointed voting members and shall include members as qualified under Section 53A-25b-201.

(3)(a) Advisory Council members shall serve two year terms and members may serve no more than three consecutive terms.

(b) Notwithstanding, Subsection (3)(a), advisory Council members serve at the pleasure of the Board.

(4) If an Advisory Council member resigns or is asked to resign, the Board shall appoint another member in a timely manner after seeking nominations.

(5) The Board shall assist the Advisory Council in developing and passing by-laws establishing procedures for:

(a) nominating Advisory Council members;

(b) recommending dismissal of Advisory Council members;

(c) ethical standards for Advisory Council members; and

(d) operation of the Advisory Council.

(6) Advisory Council bylaws may allow for representation on the Advisory Council of constituencies within the USDB community.

(7) The USDB shall establish a community council to operate in a comparable manner to a school community council under Section 53A-1a-108 through 108.1 and Rule R277-491.

(8) Members of the Advisory Council may serve as school community council members.

(9) The USDB school community council and election process shall be the same as for a district school in Section 53A-1a-108 and R277-491.

(10) The USDB may implement electronic voting and consider encouraging school community council participation

through electronic meetings and technology that facilitate participation of parents of USDB students.

R277-800-5. USDB or Student's District of Residence/Charter School as Designated LEA.

(1) To be eligible to receive free services from the USDB, a student must meet the requirements of Section 53A-25b-301.

(2)(a) A student's IEP or Section 504 accommodation plan shall determine a student's placement at the USDB, in a district school or charter school.

(b) USDB shall limit its services for students who are school-age to those on an IEP or Section 504 accommodation plan.

(3) Consistent with Subsection 53A-25b-301(3), an IEP team or Section 504 team shall determine the appropriate placement for each blind, deaf or deafblind student consistent with Board Special Education Rules incorporated by reference in Section R277-750-2.

(4) It is the responsibility of the student's district of residence or charter school to conduct Child Find , and to convene the initial IEP or Section 504 team meeting in order to determine a student's placement.

(a) A student's initial IEP or Section 504 accommodation plan meeting shall include a representative from the student's district of residence or charter school and a representative from the USDB.

(b) An LEA shall defer, where appropriate, to the parental preference in the IEP or Section 504 accommodation plan process consistent with Subsection 53A-25b-301(3)(c).

(c) Notwithstanding, Subsection (4)(b), in compliance with the IDEA, the final placement decision, as documented on the IEP or Section 504 accommodation plan, shall document a free appropriate public education for the student and shall not be determined solely by parental preference.

(5)(a) If USDB is the designated LEA for a student, USDB has full responsibility for all services defined in the student's IEP or Section 504 accommodation plan.

(b) Notwithstanding USDB's designation as LEA for a student, a representative from the district of residence or charter school remains a required member of the IEP or Section 504 accommodation plan team.

(6) If a district of residence or charter school is the LEA designated to provide services to a student with an IEP or Section 504 accommodation plan, the district of residence or charter school has the responsibility for providing instruction and services for the student except that the USDB:

(a) may be designated by the team as a related service provider; and

(b) remains a required member of the student's IEP or 504 accommodation plan team.

(7) A student's IEP or Section 504 accommodation plan shall clearly define what services are to be provided by a related service provider.

(8) The IEP or Section 504 accommodation plan team shall determine the designated LEA for student placement.

(9) If a parent is dissatisfied with a student's placement at USDB, the student's district of residence, or charter school, the parent may access dispute resolution procedures, consistent with Utah State Board of Education Special Education Rules, adopted by the Board in Section R277-750-2

(10) If a student's IEP or Section 504 accommodation plan provides for services to be provided by both the USDB and the student's district of residence, or for the USDB and district of residence to share responsibility for serving a student, a parent may access dispute resolution procedures consistent with Utah State Board of Education Special Education Rules, adopted by the Board in Section R277-750-2.

R277-800-6. Assessment of USDB Students Served in LEAs of Residence.

(1) An appropriate specialist shall assess a student who may be deaf, hard of hearing, blind, visually impaired, or deafblind using statewide assessment results and in compliance with Board rule and state and federal law.

(2) The USDB shall establish an assessment policy and guidelines to implement required assessments, which address:

(a) appropriate, complete, and timely evaluations of students;

(b) procedures for administration of assessments in addition to those required by the law, as determined by IEPs, Section 504 accommodation plans, and individual teachers;

(c) complete and accurate required assessments available to eligible students consistent with state and LEA assessment timelines and availability of materials for non-disabled students;

(d) staff professional development and preparation on appropriate administration of assessments and reporting of assessment results; and

(e) procedures to ensure appropriate interpretation and use of assessments and results for parents and USDB personnel.

R277-800-7. Extension Classrooms.

(1) The USDB and an LEA may negotiate to share the costs for providing more efficient, cost-effective, and convenient services to students who are deaf, blind, or deafblind in extension classrooms in locations other than the USDB campus.

(2) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), the LEA shall provide:

(a) classrooms;

(b) basic instructional materials;

(c) physical education, music, media, school lunch, and other programs and services, consistent with those programs and services provided to other students within the LEA;

(d) administrative support;

(e) basic secretarial services;

(f) special education related services; and

(g) IT support.

(3) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), the USDB shall provide:

(a) classroom instructors, including aides; and

(b) instructional materials specific to the disability of the students.

(4) An agreement pursuant to Subsection (1) may reassign the responsibilities of the USDB and a school district or charter school as negotiated between the LEA and the USDB.

(5) An LEA shall claim the state WPU if the LEA provides all items or services identified in Subsection (2).

R277-800-8. USDB Fiscal Procedures.

(1) The USDB shall keep fiscal, program, and accounting records as required by the Board and shall submit reports required by the Board.

(2) The USDB shall follow state standards for fiscal procedures, auditing, and accounting, consistent with Subsection 53A-25b-105(3).

(3) The USDB is a public state entity under the direction of the Board and as such is subject to state laws and exemptions consistent with Section 53A-25b-105.

(4)(a) The USDB shall prepare and present an annual budget to the Board that includes no more than a five percent carryover of any one fund, including reimbursement funds from federal programs.

(b) The five percent carryover prohibition does not apply to funds received under Section 53A-16-101.5 and Section 12 of the Utah Enabling Act.

(5)(a) The Superintendent shall recover federal reimbursement funds (IDEA and Medicaid) quarterly during the year.

(b) The Superintendent shall identify reimbursement amounts in the current year's budget, but in no event later than the subsequent year's budget.

(6)(a) The USDB shall use the revenue from the federal trust land grant designated for the benefit of the blind and the deaf, solely for the benefit of deaf, blind, and deafblind students.

(b) The recommended or designated use of federal trust land funds is subject to review by the Board.

R277-800-9. Utah State Instructional Materials Access Center.

(1) The USIMAC shall produce core instructional materials in alternative formats to ensure that all students with print disabilities qualified under the Chafee Amendment receive their materials in a timely manner.

(2) The USIMAC shall provide materials for all students with print disabilities who are qualified under the Chafee Amendment or otherwise eligible through an IEP or Section 504 accommodation plan.

(3) The Superintendent shall oversee the operations of the USIMAC.

(4) The USDB is the fiscal agent and operates the USIMAC to the extent of funds received annually from the Utah Legislature and the Board.

(5) An LEA may purchase accessible instructional materials using the LEA's own funding or request the production of accessible instructional materials in alternate formats from the USIMAC in accordance with established opt in procedures to ensure timely access for students with print disabilities.

(6) USIMAC shall provide a textbook in an alternate format by the beginning of the school year if requested no later than April 1 of the preceding school year by an LEA.

(7) The USDB ERC shall serve as the repository and distribution center for the USIMAC.

(8) A student qualifies for accessible instructional materials from the USIMAC, including Braille, audio, large print, or digital formats following an LEA determination that the student has a print disability in accordance with:

(a) the Chafee Amendment;

(b) IDEA; or

(c) Section 504 of the Rehabilitation Act.

(2)(a) An LEA may request textbooks for blind, vision impaired or deafblind students served by the USDB or the LEA consistent with a student's IEP or Section 504 accommodation plan.

(b)(i) When an LEA requests a core instructional textbook the USIMAC shall conduct a search for the textbook within existing resources, and if the textbook is available, the USIMAC shall send the textbook to the ERC for distribution to the LEA.

(ii) If a textbook is not available within existing resources, the USIMAC will conduct a search to determine if the textbook is available for purchase through another source.

(iii) If a textbook is available through the American Printing House for the Blind (APH), the USDB shall order the textbook using state acquired federal funds designated specifically for USIMAC materials and send the textbook to the ERC for distribution to the LEA.

(iv) If a textbook is not available from APH, but is available from another accessible media producer, the textbook shall be purchased and sent to the ERC for distribution to the LEA.

(v) If a textbook is not available for purchase, the LEA shall provide a regular print hard copy of the textbook to the USIMAC, which shall then produce the textbook and send it to the ERC for distribution.

(vi) The USIMAC shall produce a textbook in an LEA requested alternate format in accordance with the cost sharing outlined in a technical manual prepared by the Superintendent.

(c) The sharing of costs for purchases described in this R277-800-9 shall be outlined in a technical manual prepared by the Superintendent.

(3)(a) All approved textbook contracts for the state of Utah for instructional materials published after August 2006 shall include a provision for making NIMAS file sets available through the NIMAC in accordance with the IDEA and Board Instructional Materials Contract timelines.

(b) If the USIMAC is unable to obtain the NIMAS file set from the NIMAC because the publisher fails to timely provide the NIMAS file set to the NIMAC in accordance with the IDEA and Board Instructional Materials Contract timelines, the USIMAC may:

(i) bill the textbook publisher the difference in the cost of producing the alternate format textbook without benefit of the NIMAS file set; or

(ii) request authorization from the Board to seek damages from the publisher for failure to meet contract provisions.

(c) The Superintendent shall advise publishers of the provisions of this Subsection (3).

(d) The Utah Instructional Materials Commission created under R277-469 may not approve textbooks and materials from publishers that have a pattern of not providing materials and textbooks for students with disabilities in a timely manner, consistent with the law and Board rules.

(4)(a) An LEA may request and access audio books through the USIMAC, as appropriate, or through other sources.

(b) Membership required for other sources is the responsibility of the LEA designated as the responsible entity for serving the student in the IEP or Section 504 accommodation plan.

KEY: educational administration

September 21, 2017	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53A-1-401**
	53A-25b-201
	53A-25b-302
	53A-25b-501

R277. Education, Administration.
R277-801. Services for Students who are Deaf, Hard of Hearing, Blind, Visually Impaired, and Deafblind.
R277-801-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-25b-103, which creates USDB, and authorizes USDB to provide services to qualifying students.

(2) The purpose of this rule is to establish rules for LEAs and USDB to provide services to students who are deaf, hard of hearing, blind, visually impaired, and deafblind.

R277-801-2. Definitions.

(1) "504 plan" means a plan required by Section 504, which is designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(2)(a) "Intensive services" means services requiring vision, deaf-blind, or hearing services:

(i) in excess of 180 minutes per day for k-12 or post-high school students; or

(ii) in excess of 90 minutes per day for pre-school students.

(b) "Intensive services does not include services that are not vision, deaf-blind, or hearing specific.

(3) "Intervener" means a specially trained paraprofessional who provides access to information and communication and facilitates the development of social and emotional well-being for children who are deaf-blind.

(4) "Medicaid time study" means the primary mechanism for identifying and categorizing Medicaid administrative activities performed by an LEA's staff, which serves as the basis for developing claims for the costs of administrative activities that may be properly reimbursed under Medicaid.

(5) "Minimum school program" or "MSP" means the same as that terms is defined in Section 53A-17a-103.

(6) "Qualifying student" means a student who is deaf, hard of hearing, blind, visually impaired, or deafblind who qualifies for services in accordance with Subsection 53A-25b-301(1).

(7) "Section 504" means Section 504 of the Rehabilitation Act of 1973.

(8) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically among LEAs and the Board, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

(9) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-801-3. Responsibilities of LEAs.

(1)(a) An LEA is the single point of entry for USDB services for qualifying students.

(b) A qualifying student may not enroll in a USDB program without a referral from an LEA.

(c) When evaluating services for a qualifying student, an LEA and the USDB shall consider:

(i) primary disabilities;

(ii) secondary disabilities; and

(iii) other factors, including:

(A) transportation needs; and

(B) length of time the student would spend in transport daily.

(2) A qualifying student may receive services under:

(a) IDEA;

(b) Section 504; or

(c) a USDB Preschool Services Plan.

(3) An LEA shall annually provide to the Superintendent the name and contact information for any student with vision loss or hearing loss, even if it isn't the student's primary disability.

(4)(a) An LEA has the responsibility for the design and implementation of and IEP or Section 504 plan for qualifying students.

(b) Specific details of required intensive services for a student shall be defined within the student's IEP.

(c) A qualifying student who enrolls in a Utah school district or charter school may be eligible to receive intensive services from sensory specialists employed by USDB, if appropriately designated as specialized instruction or a related services as part of an IEP or Section 504 plan.

(5)(a) An LEA with greater than 3 percent of the student population statewide may elect to contract with USDB to provide outreach services.

(b) An LEA may employ their own sensory specialists to meet the IEP or 504 plan needs of qualifying students.

(6)(a) An LEA is responsible for the development of a qualifying student's IEP, including any assessments necessary for initial placement.

(b) Notwithstanding Subsection (6)(a), an LEA may not commit USDB to provide services to qualifying students unless USDB has participated in the IEP.

(c)(i) An LEA and USDB shall consider least restrictive environment, as well as intensive services needs of a qualifying student in determining an appropriate placement.

(ii) In the case of deaf or hard of hearing students, an IEP team should consider the opportunity for a student to have direct communication with teachers and peers.

(7) If an LEA is working with USDB staff:

(a) the LEA shall provide internet access and technical support to permit USDB staff to access the internet through technology and hardware;

(b) the LEA and USDB technology staff will jointly determine procedures to ensure access to LEA technology systems; and

(c) USDB shall provide and maintain all needed hardware and software provided to USDB staff.

(8) An LEA shall provide an assistive technology device a student if the assistive technology device is required for the implementation of the student's IEP.

R277-801-4. Designation of USDB as an LEA.

(1)(a) In order to meet the educational needs of qualifying students, an IEP team may enroll a qualifying student in a USDB program and may designate USDB as the LEA for the qualifying student.

(b) If USDB is designated as the LEA under Subsection (1)(a), the USDB program shall be treated as a placement option within the LEA continuum, and the referring LEA staff shall continue to attend IEP meetings.

(2)(a) If USDB is designated as a qualifying student's LEA, USDB is responsible from that point on for the design and implementation of the student's IEP, 504 Plan, or USDB Preschool Service Plan.

(b) USDB shall provide all special education and related services and costs documented in an IEP for a qualifying student described in Subsection (2)(a).

(c) USDB may request consultation from the referring LEA for the design of services that are required by the student beyond the student's sensory needs.

R277-801-5. Correlation of Responsibilities.

(1) For qualifying students currently enrolled with an LEA and receiving services through USDB outreach programs, an LEA will provide a list of students and their IEP due dates for the upcoming school year to the USDB Assistant Superintendent no later than June 30.

(2) An LEA shall invite USDB staff to attend IEP or 504 plan meetings for qualifying students, including meetings for:

(a) students transitioning from Part C to Part B;

(b) students moving from out of state; and

(c) students transferring between LEAs.

(3)(a) For qualifying students enrolled in an LEA and receiving no services from USDB, an LEA shall invite USDB to attend any meeting where USDB services may be considered for that student.

(b) If a change of placement is considered:

(i) both the referring LEA and USDB will participate and establish a timeline to ensure a successful transition for the student.

(ii) both the referring LEA and USDB will participate in the IEP or 504 meeting.

(4) IEP or 504 plan meetings shall be held at a mutually agreed upon time and location, with appropriate notification to all parties.

(5)(a) The Board and USDB shall provide ongoing interpreter training toward certification and mentoring for all interpreters, as requested by individual LEAs.

(b) Training provided under Subsection (7)(a) shall provide certified interpreters with the opportunity to improve skills and move up to a higher level of certification.

(c) An LEA may contract with USDB to provide interpreter services for students attending the LEA or an LEA school where a USDB extension classroom is located.

(6)(a) Each LEA, including USDB as the designated LEA, is responsible for ensuring the timely provision of textbooks and material as required by the IDEA.

(b) The Board shall:

(i) annually provide information to LEAs regarding the costs of accessible materials in the state; and

(ii) determine an equitable cost-sharing plan.

R277-801-6. Services for Qualifying Students.

(1) If a qualifying student is enrolled with USDB as the designated LEA:

(a) USDB shall include the qualifying student in all Board-required enrollment reports including:

(i) fall enrollment counts;

(ii) the child count of students with disabilities; and

(iii) the end-of-year enrollment report;

(b) Any agreements between the referring LEA and USDB shall be documented as part of a written agreement, which shall be reviewed at least annually;

(c)(i) A qualifying student's IEP team shall determine the student's transportation needs;

(ii) USDB shall provide transportation as a related service in an IEP or if required to implement a 504 plan; and

(iii) A referring LEA shall combine resources with USDB, whenever possible, to provide within-LEA transportation;

(d)(i) USDB shall annually administer all Board-required assessments.

(ii) USDB may provide alternate tests in accordance with a student's IEP and state law; and

(e) USDB shall develop and implement all programs, policies, and procedures required of an LEA by the Board and state law.

(2) If a qualifying student attends USDB extension classrooms located within an LEA:

(a) the student shall be enrolled in the general education program of the LEA school the student is attending;

(b) the LEA school shall be designated as the "school of record" for the student;

(c) the student shall be included by the LEA school or district in all required reports and uploads to UTREx;

(d) the student shall be counted in the LEA school or district total enrollment, and will be included in the calculation of all funding formulas, including Weighted Pupil Units and Minimum School Program;

(e) the student shall receive access to LEA programs and services consistent with their IEP or 504 plan, consistent with services available to other students enrolled in the student's school;

(f) the student may not be enrolled in the special education program of the LEA school the student is attending;

(g) USDB shall ensure the student receives a free appropriate public education;

(h) USDB shall ensure the student receives all special education and related services, including interpreting services, as required on the student's IEP or 504 plan;

(i) the LEA school shall generate general education funding or WPU for the student;

(j) USDB shall receive federal IDEA funding in accordance with USDB's legislative line item funding;

(k) the LEA school shall receive no state or federal special education funding for the student;

(l)(i) USDB shall provide transportation for the student as a related service when it is included in an IEP.

(ii) an LEA school shall combine resources with USDB, whenever possible, to provide within-LEA transportation; and

(m) an LEA school and USDB shall jointly ensure that any portable classrooms have access to intercom and phone service.

(3) If a qualifying student receives USDB outreach or consulting services:

(a) the student shall be enrolled in the general and special education programs of the LEA school the student attends;

(b) the LEA shall included the student in the calculation of state special education and IDEA funds for the school district or charter school;

(c) USDB may not submit the students to UTREx and may not receive state or federal special education funding;

(d) USDB will provide services at no cost for students within an LEA with less than three percent of the student population statewide; and

(e) An LEA may contract with USDB to provide services for students if an LEA has greater than three percent of the student population statewide;

(i) The Superintendent shall provide a list of LEAs that exceed the three percent threshold by December 15 for the upcoming school year;

(ii) An LEA and USDB shall sign contracts prior to initiation of services;

(iii) An LEA shall make payments in two installments, in January and June; and

(iv) The Board may assist USDB in collection of outstanding balances upon request.

(4) USDB may provide orientation and mobility or "O and M" services subject to the following:

(a) USDB shall provide eligible O and M services at no cost to an LEA if the LEA requests the services by September 1 for the next school year;

(b) USDB shall provide O and M services within normal contract hours;

(c) An LEA requesting O and M services outside of the a student's school day may contract with USDB to provide the additional services;

(d) Notwithstanding Subsection (4)(b), an LEA may choose to provide its own O and M services; and

(e) An LEA and USDB shall approve O and M services in a qualifying student's IEP or 504 plan.

(5) USDB shall provide deaf-blind services to all eligible Utah students at no cost to the student's LEA in accordance with the student's IEP or 504 plan.

(6) USDB shall provide interveners to all eligible Utah students subject to the following:

(a) USDB shall provide interveners to an LEA at no cost to the LEA;

(b)(i) Notwithstanding Subsection (6)(a), an LEA may provide their own interveners or substitute interveners and may receive financial support from USDB at the LEA's rate of pay for comparable paraprofessionals;

(ii) Financial support from USDB to an LEA for interveners or substitute interveners may not exceed the amount paid for comparable paraprofessionals in the USDB salary schedule;

(c) All interveners or substitute interveners must complete the USDB intervener training or a national certification;

(d) An LEA will provide documentation for reimbursement of an intervener or substitute intervener it hires according to USDB's reimbursement schedule;

(e) USDB shall provide a plan for training of all interveners and substitute interveners to an LEA annually; and

(f) An LEA and USDB shall develop a plan for the provision of a substitute intervener to meet an eligible student's needs, which may include:

(i) a USDB-hired substitute intervener;

(ii) an LEA-hired substitute intervener; or

(iii) other mutually agreeable arrangements.

(7) USDB may provide the following diagnostic assessment services to an LEA without charge to support the appropriate evaluation of a student who is deaf, hard of hearing, blind, visually impaired, and deafblind:

(a) the USDB Assistive Technology Team;

(b) the Deaf-Blind Assessment and Coaching Team; and

(c) low vision support.

(8) USDB may provide audiological services to an eligible student through a referral from an LEA or early intervention provider.

(a) Audiological services shall be provided at no cost to an LEA with less than three percent of the state's student population.

(b) An LEA with greater than three percent of the state's student population may contract for audiological services with USDB.

(9) An LEA and USDB may contract for services beyond those specified in this R277-801.

(10)(a) USDB may participate in Medicaid time studies for services provided directly by USDB.

(b) An LEA shall not include services provided directly by USDB in the LEA's Medicaid time studies.

(c) If an LEA contract with USDB for payable services, an LEA shall include those services in the LEA's Medicaid time study.

KEY: deaf, blind, students, services
September 21, 2017 **Art X Sec 3**
53A-1-401
53A-25b-103

R277. Education, Administration.
R277-925. Effective Teachers in High Poverty Schools Incentive Program.
R277-925-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-17a-173, which requires the Board to make rules for the administration of the Effective Teachers in High Poverty Schools Incentive Program.

(2) The purpose of this rule is to provide standards and procedures for the administration of the Effective Teachers in High Poverty Schools Incentive Program.

R277-925-2. Definitions.

(1) "Eligible teacher" means the same as that term is defined in Section 53A-17a-173.

(2) "High poverty school" means the same as that term is defined in Section 53A-17a-173.

(3) "Local education agency" or "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(4) "Median growth percentile" or "MGP" means the same as that term is defined in Section 53A-17a-173.

(5) "Program" means the Effective Teachers in High Poverty Schools Incentive Program.

(6) "Standards assessment" means the same as that term is defined in Section 53A-1-604.

(7) State-assessed subject" means English language arts, mathematics, and science.

R277-925-3. Administration of the Program.

(1) On or before December 1, the Superintendent shall:

(a) identify high poverty schools and eligible teachers in accordance with Subsection (2);

(b) distribute a list of eligible teachers to LEAs; and

(c) inform LEAs of program requirements and the timeline for applying on behalf of an eligible teacher.

(2) The Superintendent shall identify:

(a) high poverty schools based on the proportion of students who:

(i) qualify for free or reduced lunch in the current school year, based on the October 1 enrollment headcounts; and

(ii) are classified as children affected by intergenerational poverty, as determined by the Utah Department of Workforce Services, for the most recent year data is available; and

(b) eligible teachers by determining whether the teacher's MGP was greater than or equal to 70:

(i) for at least one state-assessed subject taught by the teacher;

(ii) as measured by student performance on a standards assessment;

(iii) two years before the current school year; and

(iv) excluding subjects or teachers with less than 10 tested students.

(3) To receive matching funds for the program, on or before January 15, an LEA shall:

(a) apply on behalf of an eligible teacher; and

(b) provide assurances that the LEA will pay half of the:

(i) teacher salary bonus; and

(ii) employer-paid benefits described in Section 53A-17a-173.

(4)(a) On or before June 1, the Superintendent shall:

(i) ensure that a teacher who was determined eligible under Subsection (1) and (2) taught at a high poverty school for the rull school year; and

(ii) distribute to an LEA that meets the criteria described in Subsection (3) half of the:

(A) teacher salary bonus; and

(B) employer-paid benefits described in Section 53A-17a-173.

(b) Consistent with Section 53A-17a-173, the Superintendent may distribute the funds on a pro rata basis if the number of eligible applicants exceeds the amount of available funds.

(5)(a) An LEA or an eligible teacher may appeal eligibility to the Superintendent on the basis that the teacher:

(i) is teaching at a high poverty school;

(ii) is an eligible teacher; or

(iii) has less than 10 tested students, but can demonstrate extenuating circumstances that merit an exception.

(b) An LEA or eligible teacher shall provide documentation to the Superintendent to assist the Superintendent in deciding on the appeal.

KEY: teachers, poverty schools, incentives
September 21, 2017 **Art X Sec 3**
53A-1-401
53A-17a-173

R305. Environmental Quality, Administration.
R305-7. Administrative Procedures.
R305-7-101. Scope of Rule and Purpose of Parts.

(1) This rule governs all adjudicative procedures conducted under the authority of the Environmental Quality Code, Utah Code Ann. Title 19. This rule does not govern the proceedings that result in an initial determination by the Director, including the issuance of the initial determination itself.

(2) (a) Part 1 of this Rule (R305-7-101 through 113) applies to all adjudications before the agency. It addresses general and preliminary matters.

(b) Part 2 of this Rule (R305-7-200 through 217) applies to special adjudicative proceedings. These procedures are governed by Section 19-1-301.5.

(c) Part 3 of this Rule (R305-7-301 through 320) applies to adjudicative procedures that are not special adjudicative proceedings. These procedures are governed by Section 19-1-301.

(e) Part 4 of this Rule (R305-7-401 through 403) addresses matters initiated by notices of agency action.

(d) Part 5 of this Rule (R305-7-501 through 503) addresses declaratory orders and emergency adjudication.

(e) Part 6 of this Rule (R305-7-601 through 623) addresses matters relevant to specific statutes.

R305-7-102. Definitions.

(1) The following definitions apply to this Rule. The definitions in Part 6 of this Rule, e.g., the definition of "Director," also apply for matters governed by the statutory provisions specified in that Part. If the definition in Part 6 differs from the definition in Part 1, the definition in Part 6 controls.

(a) "Administrative Law Judge" or ALJ means the person appointed under Section 19-1-301(5) or Section 19-1-301.5(5) to conduct an adjudicative proceeding.

(b) "Administrative Proceedings Records Officer" means a person who receives a record copy of submissions on behalf of the agency, as specified in R305-7-104.

(c) "Administrative Record," for purposes of Part 2 of this Rule, means the record described in Section 19-1-301.5(8)(b) and upon which a special adjudicative proceeding is conducted. See also R305-7-209.

(d) "Days" means calendar days unless otherwise specified. See also R305-7-105.

(e) "Director" means the director of one of the divisions listed in Section 19-1-105(1)(a). The Director is defined, for each statute administered by the Department, in Part 6 of this Rule.

(f) "Executive Director" means the Executive Director of the Department of Environmental Quality.

(g) "Initial Order" means an order that is not a Permit Order, that is issued by the Director and that is the final step in the portion of a proceeding that is exempt from the requirements of UAPA as provided in Section 63G-4-102(2)(k).

(h) "Notice of Violation" means a notice of violation issued by the Director that is exempt from the requirements of UAPA under Section 63G-4-102(2)(k).

(i) "Part" means the sections of this Rule that are grouped together by subject matter, e.g., Sections R305-7-501 through 503 are Part 5 of this Rule.

(j) "Party" is defined in R-305-7-207 for special adjudicative proceedings, and in R305-7-305 for other proceedings.

(k) "Permit" means any of the following:
(i) a permit;
(ii) a plan;
(iii) a license;
(iv) an approval order; or
(v) another administrative authorization made by a Director, including a financial assurance determination as defined by Section 19-1-301.5(1)(c).

(l)(i) "Permit order" means an order issued by the Director that:
(A) approves a permit;
(B) renews a permit;
(C) denies a permit;
(D) modifies or amends a permit; or
(E) revokes and reissues a permit.

(ii) "Permit order" does not include an order terminating a permit.

(m) "Permit review adjudicative proceeding" and "special adjudicative proceedings" and "permit special proceedings" mean an adjudicative proceeding to resolve a challenge to a Permit Order including a financial assurance determination as defined by Section 19-1-301.5 (1)(c).

(n) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. "Person" also includes, as appropriate to the matter, other entities as provided in definitions in the statutes specified in the Department of Environmental Quality Code, Title 19, and in rules promulgated thereunder.

(o) "Rule" means this Rule R305-7, Administrative Procedures for the Department of Environmental Quality, unless otherwise specified.

(p) "UAPA" means the Utah Administrative Procedures Act, Utah Code Ann. Title 63G, Chapter 4.

(2)(a) Ordinarily, administrative proceedings under the Environmental Quality Code are decided by the Executive Director based on a proceeding conducted by and recommended decision prepared by an Administrative Law Judge. In the event governing law specifies that another person or entity conduct a proceeding in the place of an Administrative Law Judge, the term "Administrative Law Judge" shall mean the person or entity serving in that function. In the event governing law specifies that another person or entity make final determinations regarding dispositive actions, the term "Executive Director" shall mean the person or entity who makes that final decision.

(b) Nothing in this provision R305-7-102(2) authorizes the appointment of a person or entity other than an administrative law judge to conduct an adjudicative proceeding. Nothing in this provision R305-7-102(2) authorizes the appointment of a person or entity other than the Executive Director to make a final determination regarding an adjudicative proceeding.

R305-7-103. Form of Submissions.

(1) All submissions, whether on paper copy or electronic, shall use 8-1/2 by 11 inch pages, be double-spaced, with each page numbered, and have one inch margins and 12 point font. Paper copies of documents submitted under this Rule shall ordinarily be printed on white paper; double-sided printing is encouraged but not required.

(2) Requests for agency action, notices of agency action, petitions for review, and responses to requests for agency action, shall include numbered paragraphs.

(3) The first page of every filing shall contain a caption that gives the name and file number of the proceeding, the name of the ALJ if one has been appointed, and the filing date.

(4) Requirements for motions and briefs for special adjudicative proceedings are specified in R305-7-211 and R305-7-213. Requirements for motions for other proceedings are specified in R305-7-312.

R305-7-104. Filing and Service of Notices, Orders and Other Papers.

(1) (a) Filing and service of all papers shall be made by email except as otherwise provided in this R305-7-104 and in

R305-7-309(2)(b), R305-7-309(7)(b)(ii), and R305-7-313.

(b) In the event the ALJ determines that it is inappropriate in a specific case to file and serve all papers by email, the requirements of R305-7-104(4) will govern. Those requirements may be modified by the ALJ.

(c) The provisions of R305-7-104(2) will also apply regardless of whether filing and service are done by email (R305-7-104(3)) or by traditional service methods (R305-7-104(4)).

(d) A party seeking to have filing and service requirements governed by R305-7-104(4), such as a person who does not have access to email, shall file and serve that request as provided in R305-7-104(4). Once a request to proceed under R305-7-104(4) is filed and served, the provisions of that section shall apply to all future filing and service unless otherwise ordered by the ALJ.

(2) General Provisions Governing Filing and Service.

(a) Every submission shall be filed with:

(i) the ALJ or, if no ALJ has been appointed, the Director; and

(ii) the Administrative Proceedings Records Officer.

(b) In addition, every submission shall be served upon:

(i) the Director, if a submission is not filed with the Director under paragraph (2)(a)(i);

(ii) the assistant attorney general representing the Director;

(iii) the permittee or the person who was the recipient of the Permit Order, or other order or notice of violation being challenged;

(iv) any other party.

(c) A person, other than the Director, who is represented by an attorney or other representative, as provided in R305-7-106, shall be served through the attorney or other representative.

(d) Every submission shall include a certificate of service that shows the date and manner of filing with and service on the persons identified in R305-7-104(2)(a) and (b).

(e) Service on a regulated person at the person's last known address in the agency's file shall be deemed to be service on that person.

(3) Provisions governing electronic filing and service.

(a) A submission shall be filed with the Administrative Proceedings Records Officer by emailing it to DEQAPRO@utah.gov.

(b) Filing or service on all other parties shall be by email at addresses provided by those persons. If the person filing or serving the submission is unable, after due diligence, to determine an email address for a party, the person shall file or provide service by traditional means, as provided in R305-7-104(4).

(c) (i) A text document served by email shall be submitted as a searchable PDF document.

(ii) A person filing a submission may electronically file and serve a document without a signature if the person indicates that the document was signed (e.g., "signed by (name)" or "/s/ (name)") and keeps the original on file to be provided if requested by the ALJ.

(d) The ALJ may order any other submission to be provided in a searchable format.

(e) Large emails (5 Mb or more) may not be accepted by some email systems. It shall be the responsibility of a person sending a large email to ensure that it has been received by all parties, e.g., by telephoning or by sending a separate notification email and requesting a response.

(f) Photographic or other illustration documents filed and served by email shall be submitted as:

(i) a PDF document; or

(ii) a JPEG document.

(g) Documents that are difficult to file and serve by email because of their size or form may be filed and served on a CD, DVD, USB flash drive or other commonly used digital storage medium. A document may also be provided in paper form if it is impracticable to copy the document electronically. Filing and service of such documents shall be as provided in R305-7-104(4).

(h) A party shall provide a paper copy of any document, including signed documents, upon request by the ALJ.

(4) Provisions governing traditional filing and service.

(a) Filing and service shall be made:

(i) by United States mail, postage pre-paid;

(ii) by hand-delivery;

(iii) by overnight courier delivery; or

(iv) by the Utah State Building Mail system, if the sender and receiver are both state employees.

(b) Documents to be filed with or served on the Director shall be filed and served at the address specified in Part 6.

(c) Documents to be filed with the Administrative Proceedings Records Officer shall be submitted to one of these addresses:

(i) By U.S. Mail: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, PO Box 140873, Salt Lake City Utah 84114-0873; or

(ii) By hand or commercial delivery: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, 195 North 1950 West, Second Floor, Salt Lake City Utah 84116.

(d) (i) Except as provided in R305-7-104(5)(b), a document that is filed or served by U.S Mail or overnight delivery service shall be considered filed or served on the date it is mailed or provided to the overnight delivery service. A document that is filed or served by Utah State Building Mail shall be considered filed or served on the date it is placed in a Utah State Building Mail bin.

(5)(a) A paper, signed original of any Request for Agency Action, Petition for Review, Notice of Agency Action or Petition to Intervene shall be filed and served as provided in R305-7-104(2) and (4).

(b) To be timely, a Request for Agency Action, Petition for Review, or a Petition to Intervene must be received by the Director and the Administrative Proceedings Records Officer as provided in:

(i) R305-7-203(5) and R305-7-205 (for a Petition for Review, filed and served in a special adjudicative proceeding);

(ii) R305-7-303(5) (for a request for agency action filed and served in a proceeding other than a special adjudicative proceeding);

(iii) R305-7-204(2) and R305-7-205 (for a Petition to Intervene filed and served in a special adjudicative proceeding); and

(iv) R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a Petition to Intervene filed and served in a proceeding other than a special adjudicative proceeding).

R305-7-105. Computation and Extensions of Time.

(1) A business day is any day other than a Saturday, Sunday or legal State of Utah holiday.

(2) As provided in R305-7-102, "days" means calendar days unless otherwise specified.

(3) Computing time.

(a) If a period is in calendar days:

(i) exclude the day of the event that triggers the period;

(ii) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal State of Utah holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal State of Utah holiday.

(b) If a period is in business days:

(i) exclude the day of the event that triggers the period; and

(ii) count every business day.

(c) If a document is not filed or served by email, any time for responding to the document shall be extended by three business days. This provision does not apply to a Request for Agency Action, Petition for Review or a Petition to Intervene. See R305-7-104(5).

(4) Date of issuance.

The date of issuance of a Permit Order, a Notice of Agency Action or other order is the date the document is signed and dated.

(5) Extensions of Time.

(a) To the extent permitted by Section 19-1-301.5, the ALJ may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R305-7-308. See Section 19-1-301.5(8).

(b) To the extent permitted by Section 19-1-301.5, the ALJ may postpone a deadline or, as applicable, a scheduled conference, oral argument or hearing, upon motion from the parties, or upon the ALJ's own motion. See Section 19-1-301.5(8).

(c) Notwithstanding any other provision in this section, R305-7-108(2) governs the ALJ's authority to extend time to file a Request for Agency Action, Petition for Review, or Petition to Intervene. See also the provisions cited in R305-7-108(2).

R305-7-106. Appearances and Representation.

(1) A party may be represented:

(a) by an individual if the individual is the party; or

(b) by a designated officer or other designated employee if the party is a person other than an individual.

(2) Any party may be represented by legal counsel. An attorney who is not currently a member in good standing of the Utah State Bar must present a written or oral motion for admission pro hac vice made by an active member in good standing of the Utah State Bar. Communication with and service on local counsel shall be deemed to be communication with and service on the party so represented.

R305-7-107. Proceeding Conducted by Teleconference or Other Electronic Means.

(1) All parties shall be present in person, or through an authorized representative (see R305-7-106), at an evidentiary hearing, if applicable.

(2) A party may participate in oral argument on a dispositive motion or oral argument on the merits of a special adjudicative proceeding by teleconference or other electronic means if:

(a) all other parties stipulate to participation by teleconference or other electronic means; and

(b) the ALJ approves the stipulation.

(3) A party may participate in any other hearing or conference on a dispositive motion or a hearing on the merits of a permit review adjudicative proceeding by teleconference or other electronic means if all other parties stipulate to participation by teleconference or other electronic means.

R305-7-108. Modifying Requirements of Rules.

(1) Except as provided in R305-7-108(2), the requirements of this Rule may be modified by order of the ALJ for good cause, provided the modification is not inconsistent with applicable statutory provisions.

(2) The following requirements may not be modified:

(a) the requirements for timely filing a Petition for Review under R305-7-203(5) and 205 for a special adjudicative proceeding;

(b) the requirements for timely filing a Request for Agency Action under R305-7-303(5) for a proceeding other than a special adjudicative proceeding;

(c) the requirements for timely filing a Petition to Intervene under R305-7-204(2) and 205 for a special adjudicative proceeding; and

(d) the requirements for timely filing a Petition to Intervene under R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a proceeding other than a special adjudicative proceeding.

R305-7-109. Default.

(1) The provision controlling default under UAPA, Section 63G-4-209, governs default under special adjudicative proceedings as well as proceedings under UAPA, including enforcement proceedings. However, a petitioner in a special adjudicative proceeding is not allowed to file a request for agency action. Instead, a petitioner in a special adjudicative proceeding must file a Petition for Review. Therefore, if a petitioner in a special adjudicative proceeding improperly files a request for agency action a respondent is not required to answer it. In addition, a respondent in a special adjudicative proceeding is not required to file a response to a Petition for Review under Section 63G-4-209(1)(c). However, a party in a special adjudicative proceeding who does not file a brief as required Section 19-1-301.5(8) may be held in default. See Section 19-1-301.5(10)(c).

(2) A default order shall include a statement of the grounds for default and shall be filed with the Administrative Proceedings Records Officer and shall be served on all parties.

(3) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the ALJ.

R305-7-110. Limitation on Authority under Rule.

Nothing in this Rule constitutes a grant of authority for any person other than the recipient to challenge a Notice of Violation or to initiate an action to challenge or require the agency's enforcement either generally or in a specific situation. See UAPA, Sections 63G-4-102(8) and 63G-4-201(3).

R305-7-111. No Limitation on Authority to Bring Action.

(1) Nothing in this Rule shall be read as a limitation either of the agency's statutory authority to bring an emergency proceeding or a judicial proceeding under UAPA, Section 63G-4-502, under the Department of Environmental Quality Code, Utah Code Ann. Title 19. It shall also not be read as a limitation on the procedures the agency may use for an emergency proceeding under those authorities.

(2) Failure in this Rule to provide administrative procedures for an administrative action that is authorized by statute shall not be read as a limitation of the agency's authority to bring that action.

R305-7-112. Procedures Not Addressed.

In the event there are authorities or situations for which procedures are not prescribed by these rules, the ALJ shall, for a specific case, identify analogous procedures or other procedures that will apply. If the proceeding is conducted under the authority of Section 19-1-301, it shall be conducted formally under UAPA.

R305-7-113. Applicability of UAPA.

(1) Special adjudicative proceedings are exempt from UAPA except as specifically provided in Section 19-1-301.5. See Section 19-1-301.5(3).

(2) With respect to all other orders:

(a) Initial Orders and Notices of Violation issued by the Director are exempt from the requirements of UAPA, as provided in Section 63G-4-102(2)(k).

(b) A proceeding to challenge an Initial Order or a Notice of Violation is subject to the requirements of UAPA.

(3) Neither UAPA nor this Rule applies to requests for government records or requests for confidentiality of government records. Those matters are governed by the Utah Government Records Access and Management Act, Sections 63G-2-101 through 901, and by Section 19-1-306.

R305-7-200. Retrospective Construction and Interpretation.

(1) SB 282 and SB 173 (Gen. Session 2015) modified Section 19-1-301.5 permit review adjudicative procedures effective May 12, 2015. Because the revisions are procedural, they shall be accorded retrospective construction in the sense that they will be applied to pending actions and proceedings, as well as to future actions but will not be so applied as to defeat procedural steps completed before the effective date of May 12, 2015.

R305-7-201. Scope of Rule; Purpose of Part.

Part 2 of this Rule (R305-7-201 through 217) specifies procedures to be used in a special adjudicative proceeding, as authorized under Section 19-1-301.5.

R305-7-202. Notice and Comment and Exhaustion of Remedies.

(1) As provided in 19-1-301.5(4), if a public comment period is provided during the permit application process, a person who challenges a Permit Order, including the permit applicant, may only raise an issue or argument during the special adjudicative proceeding that:

(a) the person raised during the public comment period; and

(b) was supported with sufficient information or documentation to enable the Director to fully consider the substance and significance of the issue.

(2) Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the Administrative Record in the same proceeding, or consist of state or federal statutes, regulations or rules, EPA documents of general applicability, or other generally available reference materials.

(3) The relevance of and the relevant portions of any supporting materials included with or incorporated by reference in comments shall be described with reasonable specificity.

(4) In preparing a comment response document, the Director may request that the permit applicant provide information in response to comments received during the public comment period.

R305-7-203. Petitions for Review.

(1) Permit orders may be contested by filing and serving a written Petition for Review as provided in R305-7-104(5).

(2) Any Petition for Review shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b), and the requirements of Section 19-1-301.5. See Section 19-1-301.5(6)(d).

(3) A Petition for Review shall be in writing, shall be signed by the person making the Petition for Review, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the Petition for Review is being sent;

(b) the Director's file number or other reference number, if known;

(c) the date that the Petition for Review was mailed;

(d) a statement of the legal authority and jurisdiction under which review is requested;

(e) a statement of petitioner's position, including as applicable:

(i) the legal authority under which the Petition for Review is requested;

(ii) the legal authority under which the Executive Director has jurisdiction to review the Petition for Review;

(iii) each of the petitioner's arguments in support of the petitioner's requested relief;

(iv) an explanation of how each argument described in Section 19-1-301.5(6)(d)(v)(D) was preserved;

(v) a detailed description of any permit condition to which the petitioner is objecting;

(vi) any modification or addition to a permit that the petitioner is requesting;

(vii) a demonstration that the Director's permit decision is based on a finding of fact or conclusion of law that is clearly erroneous;

(viii) if the Director addressed a finding of fact or conclusion of law described in Section 19-1-301.5(6)(d)(v)(G) in a response to public comment, a citation to the comment and response that relates to the finding of fact or conclusion of law and an explanation of why the Director's response was clearly erroneous or otherwise warrants review; and

(ix) a claim for relief.

(4) It is not sufficient under Section 63G-4-201(3) to file and serve a general statement of disagreement, a reservation of rights to serve a Petition for Review, or a request to have the matter heard.

(5) To be timely, a Petition for Review to contest a Permit Order shall be, within 30 days of the date the Permit Order being challenged was issued:

(a) received for filing by the Administrative Proceedings Records Officer at the address specified in R305-7-104(4)(c) of this Rule;

(b) received by the Director at the address specified in Part 6; and

(c) served as provided in R305-7-104(2), (4) and (5).

(6) Failure to file a Petition for Review within the period specified in R305-7-104(5) waives any right to contest the permit order or to seek judicial review.

R305-7-204. Intervention.

(1) A person who seeks to intervene in a special adjudicative proceeding under this section shall file and serve:

(a) a Petition to Intervene that:

(i) meets the requirements of Section 63G-4-207(1); and

(ii) demonstrates that the person is entitled to intervention under Section 19-1-301.5(7)(c)(ii); and

(b) a timely Petition for Review.

(2) To be timely, a Petition to Intervene shall, within 30 days after the day on which the Permit Order being challenged was issued, be:

(a) received by the Administrative Proceedings Records Officer at the address specified in R305-7-104(4)(c) of this Rule;

(b) received by the Director at the address specified in Part 6;

(c) served on all other parties as provided in R305-7-104(4).

R305-7-205. Extensions of Time for Filing Petitions for Review and Petitions to Intervene.

The time for filing a Petition for Review or a Petition to Intervene may be extended only by stipulation of the parties and only if such stipulation is received for filing before the expiration of the time for filing the Petition for Review or Petition to Intervene.

R305-7-206. Proceedings After a Petition for Review is Filed.

(1) After a Petition for Review has been filed, the parties are encouraged to meet to attempt to resolve the matter.

(2)(a) Any party may at any time file a request for appointment of an ALJ. An ALJ will not ordinarily be

appointed until requested by a party, although the Executive Director may appoint an ALJ at any time.

(b) A request for appointment of an ALJ shall be filed as provided in R305-7-104(2)(a), and served as provided in R305-7-104(2)(b).

(3) After an ALJ is appointed, the ALJ shall review and respond to the Petition for Review in accordance with Subsections 63G-4-201(3)(d) and (e).

(4) Unless the parties stipulate or the ALJ orders otherwise following a motion, the Director shall file and serve the Administrative Record, as provided in R305-7-209, within 40 days after the day on which the Executive Director issues a notice of appointment of an administrative law judge.

(5) The schedule and page limits for briefing on the merits specified in Subsection 19-1-301.5(8)(a) shall apply except as otherwise stipulated by the parties and coordinated with the ALJ in accordance with R305-7-208(6).

(6) Dispositive Motions. The schedule for submission of dispositive motions specified in Subsection 19-1-301.5(8)(a) shall apply unless otherwise stipulated by the parties. However, without stipulation or order, dispositive motions may be submitted in advance of the schedule specified in Subsection 19-1-301.5(8)(a). Any issue or argument that could be raised in a dispositive motion is not waived by failure to file such a motion, but may be raised during the briefing on the merits. See R305-7-212.

(7) Subsection 19-1-301.5(13) is explained as follows. For each issue or argument that is not dismissed or otherwise resolved under Subsection 19-1-301.5(11)(b) or (12), the ALJ shall:

(a) provide the parties an opportunity for briefing and oral argument in accordance with Subsection 19-1-301.5(8);

(b) conduct a review of the Director's order or determination, based on the record as described in Subsection 19-1-301.5(9)(b)(c), and (10)(e); and

(c) within 60 days after the day on which oral argument takes place, or, if there is no oral argument, within 60 days after the day on which the reply brief is due, the ALJ shall submit to the Executive Director a proposed dispositive action, that includes:

(i) written findings of fact;

(ii) written conclusions of law; and

(iii) a recommended order.

R305-7-207. Parties.

(1) The following are parties to a special adjudicative proceeding:

(a) the Director who issued the Permit Order being challenged in the special adjudicative proceeding;

(b)(i) the permittee; or

(ii) the person who applied for the permit, if the permit was denied; and

(c) a person granted intervention by the ALJ.

(2) A person who has filed a Petition to Intervene that has not been denied is not a party, but will be treated as a party for purposes of this Rule (e.g., for purposes of service, making motions and settlement) unless otherwise ordered by the ALJ.

R305-7-208. Conferences, Proceedings and Order.

(1) The ALJ may hold one or more conferences for the purposes of:

(a) identifying and, if possible, narrowing the issues that will be considered;

(b) determining whether an issue will be considered through a dispositive motion or during the briefing on the merits;

(c) establishing schedules for the filing of motions and briefs;

(d) considering stipulations of fact or law; and

(e) considering any other matters.

(2) The ALJ shall promptly issue an order memorializing any determinations made about the matters considered in a conference.

(3) The ALJ may at any time order a party to make a more clear statement of the issues the party intends to raise.

(4) The ALJ may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) to the extent allowed by Section 19-1-301.5 and R305-7-208(6), change deadlines and page limits for submissions established by this Rule.

(5) The parties may request the ALJ hold a conference for the purpose of addressing the matters described in R305-7-208(1).

(6) Stipulated Scheduling Orders. The ALJ shall issue scheduling orders following Section 19-1-301.5 for the administrative record, briefing and page limits, and dispositive motions that shall apply unless the parties file stipulations for alternative scheduling and page limitations. The ALJ shall promptly adopt such timely filed stipulations in applicable scheduling orders unless the ALJ is not available on the stipulated hearing date or questions the necessity of the stipulated brief lengths.

(a) Stipulated Hearing Date. If the ALJ is not available on the stipulated hearing date, the ALJ shall confer with the parties to determine a mutually acceptable date and shall specify the mutually acceptable date in applicable scheduling orders.

(b) Stipulated Over-Length Briefs. If the ALJ questions the necessity of the stipulated over-length briefs, the ALJ may require the parties to state with specificity the issues to be briefed, the number of additional pages requested, and the good cause for allowing over-length briefs. The ALJ may promptly refuse to adopt or may promptly modify through order the parties' stipulation for over-length briefs if the parties fail to show good cause.

R305-7-209. Administrative Record.

(1) To the extent they relate to the issues and arguments raised in the Petition for Review, the Administrative Record shall consist of the following items, if they exist:

(a) the permit application, draft permit, and final permit;

(b) each statement of basis, fact sheet, engineering review, or other substantive explanation designated by the Director as part of the basis for the decision relating to the Permit Order;

(c) the notice and record of each public comment period;

(d) the notice and record of each public hearing, including oral comments made during the public hearing;

(e) written comments submitted during the public comment period;

(f) responses to comments that are designated by the Director as part of the basis for the decision relating to the Permit Order;

(g) any information that is:

(i) requested by and submitted to the Director; and

(ii) designated by the Director as part of the basis for the decision relating to the Permit Order;

(h) any additional information specified by rule;

(i) any additional documents agreed to by the parties; and

(j) information supplementing the record under Section 19-1-301.5(9)(c) or R305-7-210.

(2) If there has been no notice and comment period for a Permit Order, information that is submitted with the Petition for Review shall be deemed to be part of the Administrative Record as shall information submitted in any response to the Petition for Review.

(3)(a) The Director shall prepare the record by compiling it in chronological order, numbering each page and preparing an index.

(b) The Director shall, within 40 days of service of the Notice of Appointment, or as otherwise provided in R305-7-206;

(i) file and serve an electronic copy of the record in accordance with the requirements of R305-7-104; or

(ii) make a paper copy of the record available for review during normal working hours, and file and serve a copy of the record's index as provided in R305-7-104.

(4) Any challenges to the Administrative Record shall be made by motion within 10 business days of the date the record or index is served under paragraph (3)(b).

R305-7-210. Response to Supplemental Information.

If the Administrative Record is supplemented with additional information as described in R305-7-209(1)(i) or (j), the other parties may, in response, serve and file additional information specific to the supplemental information, which shall also be part of the Administrative Record. The additional information may not raise any new matters not raised in the supplemental information.

R305-7-211. Motions.

(1) A motion shall be made in writing, and shall include the grounds upon which it is based and the relief or order sought. A separate memorandum in support of the motion is not required.

(2) Any response to a motion shall be filed within 21 days of service of the motion.

(3) Any reply to a response to a motion may be filed within 10 days of service of the response. A reply shall be limited to matters raised in the response.

(4) A motion may not exceed 20 pages. If a separate memorandum in support of a motion is filed, the motion and memorandum together shall not exceed 20 pages. A response may not exceed 15 pages. A reply may not exceed ten pages.

(5) Deadlines and page limits may be modified by order of the ALJ.

(6) Any determination by the ALJ that is dispositive shall be forwarded to the Executive Director in the form of a recommended decision.

(7) See also R305-7-206(6) and R305-7-212 regarding issues and arguments not raised by motion.

R305-7-212. Challenges to a Petition to Intervene or to Failure to Preserve an Issue.

(1) A challenge to a Petition to Intervene under Section 19-1-301.5(7) or to a party's failure to preserve an issue under Section 19-1-301.5(4) and (6)(c) may be made by motion or may be made in the parties' briefs on the merits.

(2) If a challenge under paragraph (1) relies on a significant portion of the evidence or arguments that must be considered to make a determination on the merits, the party making the challenge under paragraph (1) is encouraged to do so in the brief on the merits.

(3) The ALJ may defer ruling on a motion under paragraph (1) until the ALJ makes a decision on the merits of the case if the ALJ finds that the motion relies on a significant portion of the evidence or arguments that must be considered to make a determination on the merits.

R305-7-213. Procedures for Determination on the Merits.

(1) Requirements for briefs on the merits in a special adjudicative proceeding are as follows:

(a) The schedule and page limits specified in Section 19-1-301.5(8)(a) shall apply except as otherwise stipulated by the parties and ordered by the ALJ in accordance with R305-7-208;

(b) Any page incorporated by reference from the administrative or adjudicative record shall count toward a page limitation;

(c) The table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the administrative record cited do not count toward the page limitation;

(d) All statements of fact shall be supported by references to the pages in the administrative record in which the evidence is identified;

(e) Matters addressed in the petition but not in the opening brief shall be waived;

(f) Matters not addressed in the petition may not be raised in the opening brief.

(2) A reply or a surreply brief may not raise any issue that was not raised in the responsive brief or the reply, respectively.

(3) Briefs must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, or immaterial matters. A brief not meeting these criteria may fail to meet that party's burden of persuasion.

(4) In cases involving more than one petitioner or respondent, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(5) The ALJ shall provide an opportunity for oral argument. Oral argument shall, at a minimum, be recorded at the agency's expense using audio recording devices. The agency may elect instead to use a court reporter. If the agency does not elect to use a court reporter, any participant may request that the agency use a court reporter for the oral argument, which request shall be granted by the ALJ provided the requesting person agrees to bear the cost associated with the request. Any such request shall be submitted to the ALJ at least 10 business days before the scheduled oral argument.

(6) The parties may submit comments on the ALJ's recommended decision to the Executive Director. Comments shall not exceed 15 pages, and shall be submitted within ten business days of the service of the recommended decision. A party may file a response to another party's comments, not to exceed five pages, within five business days of the date of the service of the comments.

R305-7-214. Review and Determinations.

(1) The procedures and standards for resolving a permit review challenge are specified in Section 19-1-301.5; see in particular paragraphs (9) through (15).

(2) The standard of review for the Director's factual, technical, and scientific determinations specified in Section 19-1-301.5(14)(b) and (15)(c)(ii) is explained as follows:

(a) The petitioner has the burden of proof;

(b) Marshaling the evidence is a natural extension of the petitioner's burden of proof;

(c) For each factual, technical, and scientific determination challenged by petitioner, the petitioner is required to marshal and acknowledge the evidence in the record that supports the Director's determination. Such determination shall be overturned as clearly erroneous only if the petitioner has proven, after marshaling, that the Director's determination is not supported. See Subsections 19-1-301.5(6)(d)(v)(G) and (H) and 19-1-301.5(14); and

(d) If the petitioner fails to marshal, there is a presumption that the Director's factual, technical, and scientific determination is not clearly erroneous.

(3) The standard of review for non-factual determinations provided in Section 19-1-301.5(15)(c)(i) recognizes that the Director has been granted substantial discretion to interpret the division's governing statutes and rules.

R305-7-215. Interlocutory Orders.

(1) Interlocutory review (review by the Executive Director

before a final recommendation made by the ALJ) is not favored. Ordinarily, a party may challenge an order issued by the ALJ only after the ALJ has made a final recommended decision.

(2) A party may file, in accordance with R307-7-104, a motion for interlocutory review of a non-final ALJ order only if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), or where early resolution of a material issue may materially advance the termination of the proceeding.

(3) The Executive Director's determination to consider a motion for an interlocutory review is discretionary.

R305-7-216. Settlement.

The parties may agree to settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Director that there is a proposed settlement that will be subject to a public comment period, the ALJ shall suspend the administrative proceeding, in whole or in part, until notified by the Director or another party that the suspension should be lifted. The ALJ may order an update on the status of the settlement.

R305-7-217. Stays.

The procedure and standard for obtaining a stay is specified in Section 19-1-301.5(15).

R305-7-301. Scope of Rule; Purpose of Part.

Part 3 of this Rule (R305-7-301 through 320) specifies procedures to be used in adjudicative proceedings that are not permit review adjudicative proceedings, as authorized by Section 19-1-301. For the most part, proceedings under Part 3 of this Rule will be enforcement proceedings and proceedings to terminate permits.

R305-7-302. Designation of Proceedings as Formal or Informal.

(1) All proceedings to contest an order that is not a Permit Order, including proceedings to challenge a Notice of Violation or compliance order, shall be conducted as formal proceedings except as specifically provided in Part 6 of this Rule.

(2) The ALJ in accordance with Section 63G-4-202(3) may convert proceedings that are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced. A decision to use informal procedures must be approved by the Executive Director.

R305-7-303. Requests for Agency Action and Contesting an Initial Order or Notice of Violation.

(1) A Notice of Violation or an Initial Order may be contested by filing and serving a written Request for Agency Action as provided in R305-7-104(5).

(2) Any Request for Agency Action is governed by and shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b).

(3) As provided in Section 63G-4-201(3)(a), a Request for Agency Action shall be in writing and signed by the person making the Request for Agency Action, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date that the request for agency action was mailed;

(d) a statement of the legal authority and jurisdiction under which agency action is requested;

(e) a statement of the relief or action sought from the agency;

(f) a statement of the facts and reasons forming the basis for relief or agency action; and

(4) A Request for Agency Action shall include the requestor's name, address and email address, if any.

(5) To be timely, a Request for Agency Action to contest an Initial Order or a Notice of Violation shall be received for filing by the Director and the Administrative Proceedings Records Officer as specified in R305-7-104(2), (4) and (5) within 30 days of the issuance of the Initial Order or a Notice of Violation. This time may be extended only by stipulation of the parties and only if such stipulation is received for filing before the expiration of the time for filing the Request for Agency Action.

(6) If a Request for Agency Action is made by a person other than the recipient of an Initial Order, the Request for Agency Action shall also include a Petition to Intervene that meets the requirements of Section 63G-4-207 and R305-7-304. See R305-7-110, however (limitations on the ability of third persons to challenge enforcement proceedings).

(7) (a) It is not sufficient under Section 63G-4-201(3)(a) or this rule to file a general statement of disagreement, a reservation of rights to file a request for agency action, or a request to have the matter heard.

(b) If a person files a document challenging a notice of violation or an order under this Part 3 that does not meet the requirements of this rule, a party may file a dispositive motion addressing that inadequacy. The notice of violation or order will be final if the Executive Director approves or approves with modifications the ALJ's recommended order of dismissal.

(8) Failure to file a Request for Agency Action within the period specified in R305-7-104(5) waives any right to contest the Initial Order or to seek judicial review.

R305-7-304. Intervention.

Proceedings that are not permit review adjudicative proceedings will not ordinarily be subject to intervention. See R305-7-110 regarding intervention in enforcement proceedings. In the event intervention is appropriate under the specific facts of the case, the procedures for intervention specified in Part 2, including the deadlines for filing intervention specified in R305-7-204(2), shall govern. This time may be extended only by stipulation of the parties and the prospective intervenor and only if such stipulation is received for filing before the expiration of the time for filing the Petition to Intervene. The status and treatment of prospective intervenors in R305-7-207(2), shall also govern.

R305-7-305. Parties.

The following persons are parties to an adjudicative proceeding to resolve a challenge to an Initial Order or Notice of Violation:

(1) the person to whom the Initial Order or Notice of Violation was directed;

(2) the Director who issued an Initial Order or Notice of Violation; and

(3) any person to whom the ALJ has granted intervention under R305-7-304.

R305-7-306. Proceedings After a Request for Agency Action is Filed.

(1) After a Request for Agency Action has been filed, the parties are encouraged to meet to attempt to resolve the matter.

(2)(a) Any party may at any time file a request for appointment of an ALJ. An ALJ will not ordinarily be appointed until requested by a party, although the Executive Director may appoint an ALJ at any time.

(b) A request for appointment of an ALJ shall be filed as

provided in R305-7-104(2)(a), and served as provided in R305-7-104(2)(b).

(3) After an ALJ is appointed, the ALJ shall issue a Notice of Further Proceedings in accordance with Section 63G-4-201(3)(d) and (e).

R305-7-307. Procedures for Informal Proceedings.

(1) Procedures for Informal Proceedings are governed by Section 63G-4-203 and, except as provided in R305-7-307(4), this Rule.

(2) No hearing or other conference is required for an informal proceeding. If a hearing is held, the parties shall be permitted to testify, present evidence and comment on issues. A hearing may be conducted as a meeting rather than using trial-type procedures.

(3) Discovery and intervention are not available in an informal proceeding. The ALJ may issue a subpoena or other order to compel the production of necessary evidence.

(4) The procedures specified in R305-7-310, 313, 314 and 315 do not apply to informal procedures.

R305-7-308. Conferences, Proceedings and Order.

(1) The ALJ may hold one or more conferences for the purposes of:

(a) identifying and, if possible, narrowing the issues that will be considered;

(b) determining whether an issue will be considered at a dispositive motion hearing or an evidentiary hearing;

(c) establishing schedules for disclosures, exchange of witness lists, and the filing of motions, testimony and pre-hearing memoranda;

(d) determining the status of the litigation;

(e) considering stipulations of fact or law; and

(f) considering any other pre-hearing matters.

(2) The ALJ shall issue an order memorializing any determinations made about the matters considered in a conference.

(3) The ALJ may at any time order a party to make a more clear statement of the issues the party intends to raise at a hearing.

(4) The ALJ may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) change deadlines and page limits for submissions established by this Rule.

(5) The parties may request the ALJ hold a conference for the purpose of addressing the matters described in R305-7-308(1).

R305-7-309. Agency Record.

(1) The final agency record shall consist of an Initial Record and an Adjudicative Record.

(2)(a) The Initial Record shall be prepared by the Director and shall consist of background documents for the matter that shall be deemed to be authenticated for purposes of the hearing and motions, and may be introduced as evidence by any party. The Initial Record is not intended to take the place of discovery or of the proffer by parties of documentary evidence.

(b) The Initial Record shall be indexed and compiled in chronological order. Each page of the Initial Record shall be numbered for ease of reference. A paper and an electronic copy of the Initial Record shall be filed with the ALJ. An electronic copy of the Initial Record shall be filed and served as provided in R305-7-104(3). Electronic records shall meet the requirements for electronic filing and service in R305-7-104(3).

(3) The Initial Record document index shall include, to the extent they exist and are relevant to the issues raised in the Request for Agency Action, any documentation designated by the Director as part of the basis for issuing the Notice of Violation or Initial Order.

(4) Documents other than those specified in R305-7-309(3) may be included in the Initial Record only upon the agreement of the parties. Documents that the parties cannot agree upon may be submitted in the course of the proceeding. Failure of a party to object to inclusion of a document in the Initial Record shall be deemed to be agreement to its inclusion in the initial record and to its authenticity.

(5) If many of the documents or large parts of the documents that would ordinarily constitute the Initial Record are irrelevant to the issues raised in the proceeding, the Director may propose a more limited Initial Record. If a matter involves a multi-volume document, for example, the Director may propose to exclude the parts of the permit that are unrelated, e.g., emergency response requirements if the dispute is about waste sampling.

(6) Results of analytical analyses of samples documented in the Initial Record are deemed to be accurate unless specifically objected to no later than 15 days before the date the Director's preliminary witness lists are due.

(7) Procedure for preparing the Initial Record.

(a) Unless the ALJ directs otherwise, the Director shall compile a draft index of documents in the Initial Record, provide the draft index to the other parties. The Director shall allow time for the other parties to comment on the draft index.

(b) After consideration of the comments, the Director shall prepare the Initial Record by compiling it in chronological order, numbering each page and preparing an index. The Director shall:

(i) file and serve an electronic copy of the record in accordance with the requirements of R305-7-104(3); or

(ii) make a paper copy of the record available for review during normal working hours, and file and serve a copy of the record's index as provided in R305-7-104.

(8) Any challenges to the Initial Record shall be made by motion within 10 business days of the date the record or index is served under paragraph (7)(b).

(9) The Adjudicatory Record consists of all documents filed or issued in the proceeding beginning with the Request for Agency Action.

R305-7-310. Disclosures and Discovery.

(1) Informal discovery by agreement of the parties is preferred. All parties shall have access to information contained in the agency's records unless the records are not required to be disclosed under the Government Records Access and Management Act, Title 63G, Chapter 2, as modified by Section 19-1-306 of the Utah Environmental Quality Code.

(2) Formal discovery is allowed in a matter by agreement of the parties involved in the formal discovery or if so directed by the ALJ in a formal proceeding. The ALJ may order formal discovery when each of the following elements is present:

(a) informal discovery is inadequate to obtain the information required;

(b) there is no other available alternative that would be less costly or less burdensome;

(c) the formal discovery proposed is not unduly burdensome;

(d) the formal discovery proposed is necessary for the parties to properly prepare for the hearing;

(e) the formal discovery does not seek a party's position regarding a question of law or about the application of facts to law that could be addressed in a motion to dismiss or a motion for summary judgment; and

(f) the formal discovery proposed will not cause unreasonable delays.

(3)(a) Except as otherwise provided in this Section R305-7-310, the time periods, limitations and other requirements for discovery in the Utah Rules of Civil Procedure shall apply

unless otherwise ordered by the ALJ after consideration of the specific formal discovery proposed.

(b) No initial disclosure shall be required as provided in Utah Rules of Civil Procedure Rule 26(a)(1)(B) through (D).

(4) Each party shall provide to the other parties copies of any documents it intends to introduce as provided in R305-7-313(1). This information shall be provided and updated in accordance with a schedule established in the pre-hearing order.

R305-7-311. Subpoenas.

(1) A party requesting an administrative subpoena must prepare it and submit it to the Administrative Proceedings Records Officer for the signature of the ALJ. Each administrative subpoena form shall have the following statement prominently displayed on the form: This Administrative Subpoena is issued under the authority of the Utah Administrative Procedures Act, Section 63G-4-205(2). If you believe that this subpoena is inappropriate, you may object. The standards of Rule 45 of the Utah Rules of Civil Procedure will be used to determine whether a subpoena is appropriate. File any objection with (requestor to insert title and address of ALJ). See also Utah Admin. Code R305-7-311.

(2) Service of the subpoena shall be made by the party requesting it in a manner consistent with Rule 45(b) of the Utah Rules of Civil Procedure.

(3) A party or other person served with a subpoena may file an objection for the reasons specified in the Utah Rules of Civil Procedure, Rule 45. In response, the party that served the subpoena may file a Motion to Compel. The ALJ shall consider the Motion to Compel and require compliance with the existing subpoena, issue a new subpoena on specified conditions, or quash the subpoena.

R305-7-312. Motions.

(1) Motions may be made in writing at or before a hearing, or orally during a hearing. Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of motions that are not made orally shall be filed and served in accordance with R305-7-104. A separate memorandum in support of the motion is not required.

(2) A response to a motion, if any, shall be filed within 21 days of service of the motion.

(3) A reply, if any, may be filed within 10 days of service of the response. A reply shall be limited to matters raised in the response.

(4) A motion may not exceed 20 pages. If a separate memorandum in support of a motion is filed, the motion and memorandum together shall not exceed 20 pages. A response may not exceed 15 pages. A reply may not exceed 10 pages.

(5) Deadlines and page limits may be modified by order of the ALJ.

(6) When appropriate, parties are encouraged to file dispositive motions, such as a Motion for Judgment on the Pleadings, a Motion to Dismiss or a Motion for Summary Judgment. Parties are encouraged to file dispositive motions no later than 45 days prior to the scheduled hearing. Dispositive motions shall be prepared in accordance with requirements of Rule 12 or Rule 56 of the Utah Rules of Civil Procedure, as appropriate.

R305-7-313. Pre-hearing Briefs and other Pre-hearing Submissions.

(1) At least 30 days before a scheduled hearing, the parties shall exchange proposed exhibits and thereafter shall meet to attempt to stipulate to the admission of exhibits.

(2) At least 14 days before a scheduled hearing, the parties shall jointly file any stipulation regarding admission of exhibits and shall file copies of all of its exhibits that are subject to a stipulation. Electronic copies of the exhibits, as described in R305-7-104(3), shall be filed with the ALJ and the Administrative Proceedings Records Officer, and served on all other parties. Electronic and paper copies of the exhibits shall be served on the Administrative Proceedings Records Officer.

(3) Unless otherwise ordered by the ALJ, each party may, but is not required to file, at least 14 days before a scheduled hearing:

(a) A pre-hearing brief, limited to 25 pages, not including exhibits or any statement of facts; and

(b) Any motions related to the way the hearing will be conducted, or to the admission of exhibits and other evidence that will be presented at the hearing.

(4) A party may object to an exhibit when it is introduced in a hearing, except that no party may object to:

(a) the authenticity of a record included in the Initial Record;

(b) the accuracy of analytical analysis of samples documented in the Initial Record, except as provided in R305-7-309(6).

(5)(a) Any party may file testimony and evidence using pre-filed testimony of a witness, unless otherwise ordered by the ALJ.

(b) For lengthy or complex proceedings, pre-filed testimony is preferred and may be required by the ALJ.

(c) Pre-filed testimony shall be submitted at least 13 business days before a scheduled hearing.

R305-7-314. Hearings.

(1) The ALJ shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements while affording to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence. The ALJ shall also establish the order of presentation at the hearing.

(2)(a) All hearings shall, at a minimum, be recorded at the agency's expense using audio recording devices. The agency may elect instead to use a court reporter.

(b) Any party may request that the agency use a court reporter for the hearing, which request shall be granted by the ALJ. Unless otherwise ordered by the ALJ, the requesting party shall bear the cost associated with these requests. Any such requests shall be submitted to the ALJ at least 10 business days before the scheduled hearing.

(3) Evidence.

(a) Every party to an adjudicative proceeding has the right to introduce evidence, subject to Section 63G-4-206 and the Utah Rules of Evidence, to the extent those rules are not inconsistent with Section 63G-4-206 or this Rule. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(i) The ALJ may admit any reliable evidence possessing probative value that would be accepted by a reasonably prudent person in the conduct of his affairs.

(ii) The ALJ may admit hearsay evidence. however, no finding of fact may be based solely on hearsay evidence unless that evidence is admissible under Section 63G-4-206 and, to the extent it is not inconsistent with that section, the Utah Rules of Evidence.

(iii) If a party attempts to introduce evidence into a hearing, and it is excluded, the party may proffer the excluded testimony or evidence to allow any reviewing authority to pass on the correctness of the ruling of exclusion.

(b) Except as provided in R305-7-314(3)(d), all witnesses who have provided pre-filed testimony shall be present at the hearing unless:

(i) otherwise agreed to by the parties; and

(ii) ordered by the ALJ.

(c) A witness for whom pre-filed testimony has been

submitted shall be allowed to give a brief summary of that testimony, and shall then be made available for cross-examination.

(d) Except as otherwise agreed to by the parties and ordered by the ALJ, the pre-filed testimony of any witness who is not present at the hearing will be treated as other hearsay evidence as provided in Utah Code Ann. Subsections 63G-4-206(1)(c) and 63G-4-208(3).

(e) Oral testimony at a formal hearing will be sworn. The oath will be administered by the reporter or the ALJ. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

R305-7-315. Post-hearing Findings and Conclusions.

Unless otherwise ordered by the ALJ, not later than 14 days after a hearing, each party may, but is not required to submit proposed findings of fact, indentifying with specificity supporting evidence in the record, and proposed conclusions of law.

R305-7-316. Executive Director's Decision on the Merits.

(1) The parties may submit comments on the ALJ's recommended decision to the Executive Director. Comments shall not exceed 15 pages, and shall be submitted within ten business days of the service of the recommended decision. A party may file a response to another party's comments, not to exceed five pages, within five business days of the date of the service of the comments.

(2) The Executive Director shall issue an order that meets the requirements of Section 63G-4-208.

R305-7-317. Interlocutory Orders.

(1) Interlocutory review is not favored. Ordinarily, a party may challenge an order issued by the ALJ only after the ALJ has made a final recommended decision.

(2) A party may file, in accordance with R305-7-104, a motion for interlocutory review of a non-final ALJ order only if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), or where early resolution of a material issue may materially advance the termination of the proceeding.

(3) The Executive Director's determination to consider a motion for an interlocutory review is discretionary.

R305-7-318. Stays of Orders.

(1) Stay of Orders Pending Administrative Adjudication.

(a) A party seeking a stay of an Initial Order during an adjudicative proceeding shall file a motion with the ALJ.

(b) An ALJ shall grant a stay if the party seeking the stay demonstrates the following:

(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The stay, if issued, would not be adverse to the public interest; and

(iv) There is a substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) The standards specified in R305-7-318(1)(b) shall apply to any interlocutory review of an order regarding a requested stay of an Initial Order.

(3) Stay of the Order Pending Judicial Review.

(a) A party seeking a stay of a final order by the Executive Director shall file a motion with the Executive Director.

(b) The standards specified in R305-7-318(1)(b) shall apply to any such request.

R305-7-319. Effectiveness and Finality of Initial Orders and Notices of Violation.

(1) Unless otherwise stated in the order or notice, an Initial Order or a Notice of Violation is effective upon issuance and, even if it is contested, remains effective unless a stay is issued or the Initial Order or a Notice of Violation is rescinded, vacated or otherwise terminated.

(2) The date of issuance of an Initial Order or a Notice of Violation is the date the Initial Order or a Notice of Violation is signed and dated.

(3) Failure to contest an Initial Order or a Notice of Violation within the period provided in R305-7-303(5) waives any right of administrative contest, reconsideration, review or judicial appeal.

R305-7-320. Settlement.

The parties may agree to settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Director that there is a proposed settlement that will be subject to a public comment period, the ALJ shall suspend the administrative proceeding, in whole or in part, until notified by the Director or another party that the suspension should be lifted. The ALJ may order an update on the status of the settlement.

R305-7-401. Purpose of Part.

Part 4 of this Rule (R305-7-401 through 403) governs proceedings initiated by the agency with a Notice of Agency Action.

R305-7-402. Notices of Agency Action to Impose a Penalty.

Before issuing a Notice of Agency Action assessing penalties, the Director shall provide at least 30 days' notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.

R305-7-403. Procedures following a Notice of Agency Action.

If the recipient of a Notice of Agency Action does not file a written response within 30 days of the date the Notice of Agency Action is issued, the Director may issue a final order under Section 63G-4-209(1)(c) and R305-7-109. If the recipient does file a written response, an ALJ will conduct a formal proceeding on the matter using, as appropriate, the procedures specified in UAPA and Parts 1, 2 (for Permit Orders), 3 (for all other orders) and 6 of this Rule.

R305-7-501. Purpose of Part.

Part 5 of this Rule (R305-7-501 through 503) governs requests for declaratory and emergency actions.

R305-7-502. Declaratory Orders.

(1) Any Request for a Declaratory Order shall be addressed first to the Director specified in Part 6 of this Rule,

(2) Any person who seeks to obtain a declaratory order shall file a Request for Declaratory Order that meets these requirements. The request shall:

(a) Clearly designate the Request for Agency Action as one requesting a declaratory order;

(b) Identify the statute, department or division rule or order to be reviewed;

(c) Describe in detail the situation or circumstances in which the applicability of the statute, rule or order is to be reviewed;

(d) Describe the Requestor's reason or need for the order;
(e) Set out a proposed order;
(f) As appropriate, address with specificity each of the circumstances described in R305-7-502(4) and demonstrate that the condition does not apply.
(3) Failure to submit a complete Request for Declaratory Order is grounds for denying the Request.
(4) The following classes of circumstances are exempt from declaratory order, as provided in Section 63G-4-503(3)(b):
(a) Circumstances in which a declaratory order would substantially prejudice the rights of a person who would be a necessary party under the Utah Rules of Civil Procedure, unless the Petitioner has that person's consent in writing;
(b) Circumstances in which the person requesting the declaratory order does not have standing;
(c) Circumstances in which informal agency opinion or other agency action is sufficient to meet the need described in the Petition;
(d) Circumstances in which questions have already been adequately addressed by the agency in an order or in informal advice;
(e) Circumstances that raise questions that are clear and do not warrant an order;
(f) Circumstances that are more properly addressed by a statutory change or rulemaking proceedings;
(g) Circumstances that arise out of pending or anticipated litigation in a civil, criminal or administrative forum and that are more properly addressed by that forum;
(h) Circumstances under which the critical facts are not clear and may be altered by subsequent events, or the issues are otherwise not yet ripe for consideration;
(i) Circumstances under which the person making the request is unable to show that real risk to that person will be confronted if the intended course of conduct is taken; and
(j) Circumstances involving use of the agency's emergency authority.
(5) If no declaratory order or order setting the matter for hearing is issued within 60 days of the Request, the Request shall be deemed denied.
(6) An Initial Order of the Director on a Request for Declaratory Action may be challenged by filing a request for agency action under this Rule.

R305-7-503. Emergency Actions.
Emergency orders may be issued as provided in Section 63G-4-502. See R305-7-111.

R305-7-601. Purpose of Part.
(1) Part 6 of this Rule (R305-7-601 through 623) provides definitions and other provisions that will govern the way the procedures specified in Parts 2 through 5 of this Rule will apply to adjudicative procedures brought under specific statutes.
(2) For all statutes, Parts 1, 2 and 6 of this Rule apply to a proceeding to challenge a Permit Order.
(3) For all statutes, Parts 1, 3 and 6 of this Rule apply to a proceeding to challenge a Notice of Violation or other Initial Order.

R305-7-602. Addresses for Filing.
(1) Documents submitted to the Executive Director of the Department of Environmental Quality shall be sent to:
Executive Director
Department of Environmental Quality
P.O. Box 144810
Salt Lake City, Utah 84114-4810
Alternatively, these documents may be delivered by courier or hand delivery to:
Executive Director
Department of Environmental Quality
195 North 1950 West, 4th Floor
Salt Lake City, Utah 84116-3097
(2) Documents submitted to the Director of the Division of Air Quality shall be sent to:
Director, Division of Air Quality
P.O. Box 144820
Salt Lake City, Utah 84114-4820
Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Air Quality
195 North 1950 West, 4th Floor
Salt Lake City, Utah 84116-3097
(3) Documents submitted to the Director of the Division of Drinking Water shall be sent to:
Director, Division of Drinking Water
P.O. Box 144830
Salt Lake City, Utah 84114-4830
Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Drinking Water
195 North 1950 West, 3rd Floor
Salt Lake City, Utah 84116-3097
(4) Documents submitted to the Director of the Division of Waste Management and Radiation Control shall be sent to:
Director, Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880
Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Waste Management and Radiation Control
195 North 1950 West, 2nd Floor
Salt Lake City, Utah 84116-3097
(5) Documents submitted to the Director of the Division of Environmental Response and Remediation shall be sent to:
Director, Division of Environmental Response and Remediation
P.O. Box 144840
Salt Lake City, Utah 84114-4840
Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Environmental Response and Remediation
195 North 1950 West, 1st Floor
Salt Lake City, Utah 84116-3097
(6) Documents submitted to the Director of the Division of Water Quality shall be sent to:
Director, Division of Water Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870
Alternatively, these documents may be delivered by courier or hand delivery to:
Director
Division of Water Quality
195 North 1950 West, 3rd Floor
Salt Lake City, Utah 84116-3097

R305-7-603. Matters Governed by Title 19, Chapter 1 of the Environmental Quality Code, but not Including Title 19, Chapter 1, Part 4.
(1) Scope. This subsection R305-7-603 applies to all matters governed by Title 19, Chapter 1, of the Environmental Quality Code.
(2) Definitions.
"Director" shall refer to the Executive Director.
(3) Orders and notices issued under the authority of Title 19, Chapter 1 of the Environmental Quality Code are not exempt from the requirements of UAPA. The provisions of

UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated under the authority of Title 19, Chapter 1, the "Environmental Quality Code."

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for any person other than the agency to initiate adjudicative proceedings under Title 19, Chapter 1. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Title 19, Chapter 1.

(5) Proceedings under Title 19, Chapter 1 of the Environmental Quality Code, and specifically under Section19-1-202(2)(a), will be conducted formally under UAPA.

(6) Agency review under Section 63G-4-301 is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-7-604. Matters Governed by the Air Conservation Act, Title 19, Chapter 2, but not Including Sections 19-2-112 or 19-2-123 through 19-2-126.

(1) This subsection R305-7-604 applies to all matters governed by the Air Conservation Act, Title 19, Chapter 2, but not including Sections 19-2-112 or 19-2-123 through 19-2-126.

(2) "Director" means the Director of the Division of Air Quality.

R305-7-605. Matters Governed by Section 19-2-112 of the Air Conservation Act.

(1) This subsection R305-7-605 describes matters governed by Section 19-2-112(1) of the Air Conservation Act, and applies to matters governed by Section 19-2-112(2) of that Act.

(2) Actions taken under the authority of Section 19-2-112(1) are subject to the procedures specified in that subsection only; neither this Rule nor UAPA applies.

(3) Orders and notices issued under the authority of 19-2-112(2) are subject to the requirements of and procedure specified in 63G-4-502. There is no administrative review available for orders issued under this provision. Any request for reconsideration shall be addressed to the Executive Director at the address specified in R305-7-602(1).

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for:

(a) any person other than the agency to initiate adjudicative proceedings under 19-2-112(2); or

(b) any person to intervene in an action commenced under 19-2-112(2).

R305-7-606. Matters Governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act.

(1) This subsection R305-7-606 applies to matters governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act. Sections 59-7-605 and 59-10-1009 of the Utah Tax Code also apply to these matters.

(2) Definitions.

"Director" means the Director of the Division of Air Quality for Requests relating to air pollution control equipment, or the Director of the Division of Water Quality for requests relating to water pollution control equipment.

R305-7-607. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but not Including Section 19-3-109.

(1) This subsection R305-7-607 applies to all matters governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.

(2) Definitions.

"Director" means the Director of the Division of Radiation Control.

R305-7-608. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, Section 19-3-109.

(1) This subsection R305-7-608 applies to all matters governed by Section 19-3-109 of the Radiation Control Act.

(2) Definitions.

"Director" means the Director of the Division of Radiation Control.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Section 19-3-109.

R305-7-609. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not Including Section 19-4-109(1).

(1) This subsection R305-7-609 applies to all matters governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not included Section 19-4-109(1).

(2) Definitions.

"Director" means the Director of the Division of Drinking Water.

R305-7-610. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, Section 19-4-109(1).

(1) This subsection R305-7-610 applies to all matters governed by Section 19-4-109(1) of the Safe Drinking Water Act.

(2) Definitions.

"Director" means the Director of the Drinking Water Division.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Section 19-4-109(1).

R305-7-611. Matters Governed by the Water Quality Act, Title 19, Chapter 5.

(1) This subsection R305-7-611 applies to all matters governed by the Water Quality Act, Title 19, Chapter 5.

(2) Definitions.

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

R305-7-612. Matters Governed by the Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(1) This subsection R305-7-612 applies to all matters governed by Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(2) Definitions.

"Director" means the Director of the Solid and Hazardous Waste Division.

R305-7-613. Matters Governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(1) This subsection R305-7-613 applies to all matters governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(2) Definitions.

"Director" means the Executive Director.

R305-7-614. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not Including Sections 19-6-405.3, 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) This subsection R305-7-614 applies to all matters governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not including Sections 19-6-405.3, 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

R305-7-615. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) This subsection R305-7-615 applies to all matters governed by Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-416.5 of the Underground Storage Tank Act.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

R305-7-616. Matters Governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(1) This subsection R305-7-616 applies to all matters governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

R305-7-617. Matters Governed by the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(1) This subsection R305-7-617 applies to all matters governed by Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

R305-7-618. Matters Governed by the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

(1) This subsection R305-7-618 applies to all matters over which the Director has authority under the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9, and under the authority of the Board.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

R305-7-619. Matters Governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(1) This subsection R305-7-619 applies to all matters governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

R305-7-620. Matters Governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(1) Scope. This subsection R305-7-620 applies to all matters governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

R305-7-621. Matters Governed by the Voluntary Cleanup Program Statute, Title 19, Chapter 8.

(1) This subsection R305-7-621 applies to all matters governed by the Voluntary Cleanup Program statute, Title 19, Chapter 8.

(2) Determinations about whether to enter into an agreement under this program lie within the sole discretion of the Executive Director or a person appointed by the Executive Director.

(3) The Executive Director delegates to the Director of the Division of Environmental Response and Remediation authority to issue orders and other Notices of Agency Action regarding:

(a) proposed determinations regarding approvals, disapprovals or modifications of work plans and reports;

(b) approvals, denials or modifications of certificates of completion; and

(c) declaratory orders under Section 63G-4-503 and R305-7-502.

R305-7-622. Matters Governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(1) This subsection R305-7-622 applies to all matters governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(2) A request to approve a proposed termination or modification of an environmental institutional control adopted under this act shall be considered a Request for Agency Action and Parts 1, 2 and 6 of this Rule shall apply.

R305-7-623. Matters Governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(1) This subsection R305-7-623 applies to all matters governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(2) A request to approve a proposed agreement, modification of an agreement, or termination of an agreement shall be considered to be a Request for Agency Action and Parts 1, 2 and 6 of this Rule shall apply.

KEY: administrative procedures, adjudicative procedures, hearings

November 20, 2015

19-1-301
19-1-301.5
63G-4-102
63G-4-201
63G-4-202
63G-4-203
63G-4-205
63G-4-503

R307. Environmental Quality, Air Quality.
R307-214. National Emission Standards for Hazardous Air Pollutants.
R307-214-1. Pollutants Subject to Part 61.

The provisions of Title 40 of the Code of Federal Regulations (40 CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of July 1, 2016, are incorporated into these rules by reference. For pollutant emission standards delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the director.

R307-214-2. Sources Subject to Part 63.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2016, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the director, unless by federal law the authority is specific to the Administrator and cannot be delegated.

(1) 40 CFR Part 63, Subpart A, General Provisions.

(2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).

(3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

(4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

(6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

(7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.

(8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.

(9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

(10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.

(12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

(13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.

(15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.

(17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.

(18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers

and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.

(57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).

(58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

(59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(60) 40 CFR Part 63, Subpart HHHH, National Emission Standards for Wet-Formed Fiberglass Mat Production.

(61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.

(62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.

(64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(65) 40 CFR Part 63, Subpart NNNN, National Emission Standards for Large Appliances Surface Coating Operations.

(66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(67) 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

(68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(70) 40 CFR Part 63, Subpart SSSS, National Emission Standards for Metal Coil Surface Coating Operations.

(71) 40 CFR Part 63, Subpart TTTT, National Emission Standards for Leather Tanning and Finishing Operations.

(72) 40 CFR Part 63, Subpart UUUU, National Emission Standards for Cellulose Product Manufacturing.

(73) 40 CFR Part 63, Subpart VVVV, National Emission Standards for Boat Manufacturing.

(74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(75) 40 CFR Part 63, Subpart XXXX, National Emission Standards for Tire Manufacturing.

(76) 40 CFR Part 63, Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

(78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(79) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.

(82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.

(85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.

(86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.

(87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(89) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test

Cells/Stands.

(93) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(97) 40 CFR Part 63, Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units.

(98) 40 CFR Part 63, Subpart WWWWW, National Emission Standards for Hospital Ethylene Oxide Sterilizers.

(99) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.

(100) 40 CFR Part 63, Subpart ZZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(101) 40 CFR Part 63 Subpart BBBBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(102) 40 CFR Part 63 Subpart CCCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(103) 40 CFR Part 63, Subpart DDDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(104) 40 CFR Part 63, Subpart EEEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(105) 40 CFR Part 63, Subpart FFFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(106) 40 CFR Part 63, Subpart GGGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(107) 40 CFR Part 63, Subpart JJJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(108) 40 CFR Part 63, Subpart LLLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(109) 40 CFR Part 63, Subpart MMMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(110) 40 CFR Part 63, Subpart NNNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.

(111) 40 CFR Part 63, Subpart OOOOOO, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(112) 40 CFR Part 63, Subpart PPPPPP, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.

(113) 40 CFR Part 63, Subpart QQQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(114) 40 CFR Part 63, Subpart RRRRRR, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.

(115) 40 CFR Part 63, Subpart SSSSSS, National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.

(116) 40 CFR Part 63, Subpart VVVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(117) 40 CFR Part 63, Subpart TTTTTT, National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.

(118) 40 CFR Part 63, Subpart WWWWWW, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.

(119) 40 CFR Part 63, Subpart XXXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

(120) 40 CFR Part 63, Subpart YYYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.

(121) 40 CFR Part 63, Subpart ZZZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.

(122) 40 CFR Part 63, Subpart AAAAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.

(123) 40 CFR Part 63, Subpart BBBBBBB, National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.

(124) 40 CFR Part 63, Subpart CCCCCCC, National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.

(125) 40 CFR Part 63, Subpart DDDDDDD, National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.

(126) 40 CFR Part 63, Subpart EEEEEEE, National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.

KEY: air pollution, hazardous air pollutant, MACT, NESHAP
June 8, 2017 19-2-104(1)(a)
Notice of Continuation September 8, 2017

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.
R317-2-1A. Statement of Intent.

Whereas the pollution of the waters of this state constitute a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas such pollution is contrary to the best interests of the state and its policy for the conservation of the water resources of the state, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of the state without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing water pollution; to place first in priority those control measures directed toward elimination of pollution which creates hazards to the public health; to insure due consideration of financial problems imposed on water polluters through pursuit of these objectives; and to cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

R317-2-1B. Authority.

These standards are promulgated pursuant to Sections 19-5-104 and 19-5-110.

R317-2-1C. Triennial Review.

The water quality standards shall be reviewed and updated, if necessary, at least once every three years. The Director will seek input through a cooperative process from stakeholders representing state and federal agencies, various interest groups, and the public to develop a preliminary draft of changes. Proposed changes will be presented to the Water Quality Board for information. Informal public meetings may be held to present preliminary proposed changes to the public for comments and suggestions. Final proposed changes will be presented to the Water Quality Board for approval and authorization to initiate formal rulemaking. Public hearings will be held to solicit formal comments from the public. The Director will incorporate appropriate changes and return to the Water Quality Board to petition for formal adoption of the proposed changes following the requirements of the Utah Rulemaking Act, Title 63G, Chapter 3.

R317-2-2. Scope.

These standards shall apply to all waters of the state and shall be assigned to specific waters through the classification procedures prescribed by Sections 19-5-104(5) and 19-5-110 and R317-2-6.

R317-2-3. Antidegradation Policy.

3.1 Maintenance of Water Quality

Waters whose existing quality is better than the established standards for the designated uses will be maintained at high quality unless it is determined by the Director, after appropriate intergovernmental coordination and public participation in concert with the Utah continuing planning process, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. However, existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.

In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

3.2 Category 1 Waters

Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the rules for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-3.5.b.4., and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as Category 1 Waters are listed in R317-2-12.1.

3.3 Category 2 Waters

Category 2 Waters are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality. Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-.3.5.b.4., and where best management practices will be employed to minimize pollution effects. Waters of the state designated as Category 2 Waters are listed in R317-2-12.2.

3.4 Category 3 Waters

For all other waters of the state, point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5.

3.5 Antidegradation Review (ADR)

An antidegradation review will determine whether the proposed activity complies with the applicable antidegradation requirements for receiving waters that may be affected.

An antidegradation review (ADR) may consist of two parts or levels. A Level I review is conducted to insure that existing uses will be maintained and protected.

Both Level I and Level II reviews will be conducted on a parameter-by-parameter basis. A decision to move to a Level II review for one parameter does not require a Level II review for other parameters. Discussion of parameters of concern is those expected to be affected by the proposed activity.

Antidegradation reviews shall include opportunities for public participation, as described in Section 3.5e.

a. Activities Subject to Antidegradation Review (ADR)

1. For all State waters, antidegradation reviews will be conducted for proposed federally regulated activities, such as those under Clean Water Act Sections 401 (FERC and other Federal actions), 402 (UPDES permits), and 404 (Army Corps of Engineers permits). The Director may conduct an ADR on any projects with the potential for major impact on the quality of waters of the state. The review will determine whether the proposed activity complies with the applicable antidegradation requirements for the particular receiving waters that may be affected.

2. For Category 1 Waters and Category 2 Waters, reviews shall be consistent with the requirement established in Sections 3.2 and 3.3, respectively.

3. For Category 3 Waters, reviews shall be consistent with the requirements established in this section

b. An Anti-degradation Level II review is not required

where any of the following conditions apply:

1. Water quality will not be lowered by the proposed activity or for existing permitted facilities, water quality will not be further lowered by the proposed activity, examples include situations where:

(a) the proposed concentration-based effluent limit is less than or equal to the ambient concentration in the receiving water during critical conditions; or

(b) a UPDES permit is being renewed and the proposed effluent concentration and loading limits are equal to or less than the concentration and loading limits in the previous permit; or

(c) a UPDES permit is being renewed and new effluent limits are to be added to the permit, but the new effluent limits are based on maintaining or improving upon effluent concentrations and loads that have been observed, including variability; or

2. Assimilative capacity (based upon concentration) is not available or has previously been allocated, as indicated by water quality monitoring or modeling information. This includes situations where:

(a) the water body is included on the current 303(d) list for the parameter of concern; or

(b) existing water quality for the parameter of concern does not satisfy applicable numeric or narrative water quality criteria; or

(c) discharge limits are established in an approved TMDL that is consistent with the current water quality standards for the receiving water (i.e., where TMDLs are established, and changes in effluent limits that are consistent with the existing load allocation would not trigger an antidegradation review).

Under conditions (a) or (b) the effluent limit in an UPDES permit may be equal to the water quality numeric criterion for the parameter of concern.

3. Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired,

4. The water quality effects of the proposed activity are expected to be temporary and limited. As general guidance, CWA Section 402 general discharge permits, CWA Section 404 general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. Factors to be considered in determining whether water quality effects will be temporary and limited may include the following:

(a) Length of time during which water quality will be lowered.

(b) Percent change in ambient concentrations of pollutants of concern

(c) Pollutants affected

(d) Likelihood for long-term water quality benefits to the segment (e.g., dredging of contaminated sediments)

(e) Potential for any residual long-term influences on existing uses.

(f) Impairment of the fish spawning, survival and development of aquatic fauna excluding fish removal efforts.

c. Anti-degradation Review Process

For all activities requiring a Level II review, the Division will notify affected agencies and the public with regards to the requested proposed activity and discussions with stakeholders may be held. In the case of Section 402 discharge permits, if it is determined that a discharge will be allowed, the Director will develop any needed UPDES permits for public notice following the normal permit issuance process.

The ADR will cover the following requirements or determinations:

1. Will all Statutory and regulatory requirements be met?

The Director will review to determine that there will be achieved all statutory and regulatory requirements for all new and existing point sources and all required cost-effective and reasonable best management practices for nonpoint source control in the area of the discharge. If point sources exist in the area that have not achieved all statutory and regulatory requirements, the Director will consider whether schedules of compliance or other plans have been established when evaluating whether compliance has been assured. Generally, the "area of the discharge" will be determined based on the parameters of concern associated with the proposed activity and the portion of the receiving water that would be affected.

2. Are there any reasonable less-degrading alternatives?

There will be an evaluation of whether there are any reasonable non-degrading or less degrading alternatives for the proposed activity. This question will be addressed by the Division based on information provided by the project proponent. Control alternatives for a proposed activity will be evaluated in an effort to avoid or minimize degradation of the receiving water. Alternatives to be considered, evaluated, and implemented to the extent feasible, could include pollutant trading, water conservation, water recycling and reuse, land application, total containment, etc.

For proposed UPDES permitted discharges, the following list of alternatives should be considered, evaluated and implemented to the extent feasible:

(a) innovative or alternative treatment options

(b) more effective treatment options or higher treatment levels

(c) connection to other wastewater treatment facilities

(d) process changes or product or raw material substitution

(e) seasonal or controlled discharge options to minimize discharging during critical water quality periods

(f) pollutant trading

(g) water conservation

(h) water recycle and reuse

(i) alternative discharge locations or alternative receiving waters

(j) land application

(k) total containment

(l) improved operation and maintenance of existing treatment systems

(m) other appropriate alternatives

An option more costly than the cheapest alternative may have to be implemented if a substantial benefit to the stream can be realized. Alternatives would generally be considered feasible where costs are no more than 20% higher than the cost of the discharging alternative, and (for POTWs) where the projected per connection service fees are not greater than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. Alternatives within these cost ranges should be carefully considered by the discharger. Where State financing is appropriate, a financial assistance package may be influenced by this evaluation, i.e., a less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alternative.

It must also be recognized in relationship to evaluating options that would avoid or reduce discharges to the stream, that in some situations it may be more beneficial to leave the water in the stream for instream flow purposes than to remove the discharge to the stream.

3. Does the proposed activity have economic and social importance?

Although it is recognized that any activity resulting in a discharge to surface waters will have positive and negative aspects, information must be submitted by the applicant that any discharge or increased discharge will be of economic or social importance in the area.

The factors addressed in such a demonstration may include,

but are not limited to, the following:

(a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment);

(b) increased production;

(c) improved community tax base;

(d) housing;

(e) correction of an environmental or public health problem; and

(f) other information that may be necessary to determine the social and economic importance of the proposed surface water discharge.

4. The applicant may submit a proposal to mitigate any adverse environmental effects of the proposed activity (e.g., instream habitat improvement, bank stabilization). Such mitigation plans should describe the proposed mitigation measures and the costs of such mitigation. Mitigation plans will not have any effect on effluent limits or conditions included in a permit (except possibly where a previously completed mitigation project has resulted in an improvement in background water quality that affects a water quality-based limit). Such mitigation plans will be developed and implemented by the applicant as a means to further minimize the environmental effects of the proposed activity and to increase its socio-economic importance. An effective mitigation plan may, in some cases, allow the Director to authorize proposed activities that would otherwise not be authorized.

5. Will water quality standards be violated by the discharge?

Proposed activities that will affect the quality of waters of the state will be allowed only where the proposed activity will not violate water quality standards.

6. Will existing uses be maintained and protected?

Proposed activities can only be allowed if "existing uses" will be maintained and protected. No UPDES permit will be allowed which will permit numeric water quality standards to be exceeded in a receiving water outside the mixing zone. In the case of nonpoint pollution sources, the non-regulatory Section 319 program now in place will address these sources through application of best management practices to ensure that numeric water quality standards are not exceeded.

7. If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Director will apply the water quality standards and anti-degradation policy to protect the existing use. Narrative criteria may be used as a basis to protect existing uses for parameters where numeric criteria have not been adopted. Procedures to change the stream use designation to recognize the existing use as the designated use would be initiated.

d. Special Procedures for Drinking Water Sources

An Antidegradation Level II Review will be required by the Director for discharges to waters with a Class 1C drinking water use assigned.

Depending upon the locations of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or in stream water quality standards, may be required by the Director in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, removal of any specific contaminants for which drinking water maximum contaminant levels (MCLs) exists, and/or nutrient removal to reduce the organic content of raw water used as a source for domestic water systems.

Additional monitoring may include analyses for viruses, Giardia, Cryptosporidium, other pathogenic organisms, and/or any contaminant for which drinking water MCLs exist. Depending on the results of such monitoring, more stringent treatment may then be required.

The additional treatment/effluent limits/monitoring which may be required will be determined by the Director after consultation with the Division of Drinking Water and the downstream drinking water users.

e. Public Notice

The public will be provided notice and an opportunity to comment on the conclusions of all completed antidegradation reviews. When possible, public notice on the antidegradation review conclusions will be combined with the public notice on the proposed permitting or certifying action. In the case of UPDES permits, public notice will be provided through the normal permitting process, as all draft permits are public noticed for 30 days, and public comment solicited, before being issued as a final permit. The Statement of Basis for the draft UPDES permit will contain information on how the ADR was addressed including results of the Level I and Level II reviews. In the case of Section 404 permits from the Corps of Engineers, the Division of Water Quality will develop any needed 401 Certifications and the public notice may be published in conjunction with the US Corps of Engineers public notice procedures. Other permits requiring a Level II review will receive a separate public notice according to the normal State public notice procedures.

f. Implementation Procedures

The Director shall establish reasonable protocols and guidelines (1) for completing technical, social, and economic need demonstrations, (2) for review and determination of adequacy of Level II ADRs and (3) for determination of additional treatment requirements. Protocols and guidelines will consider federal guidance and will include input from local governments, the regulated community, and the general public. The Director will inform the Water Quality Board of any protocols or guidelines that are developed.

R317-2-4. Colorado River Salinity Standards.

In addition to quality protection afforded by these rules to waters of the Colorado River and its tributaries, such waters shall be protected also by requirements of "Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975" and a supplement dated August 26, 1975, entitled "Supplement, including Modifications to Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975", as approved by the seven Colorado River Basin States and the U.S. Environmental Protection Agency, as updated by the 1978 Revision and the 1981, 1984, 1987, 1990, 1993, 1996, 1999, 2002, 2005, 2008, and 2011 reviews of the above documents.

R317-2-5. Mixing Zones.

A mixing zone is a limited portion of a body of water, contiguous to a discharge, where dilution is in progress but has not yet resulted in concentrations which will meet certain standards for all pollutants. At no time, however, shall concentrations within the mixing zone be allowed which are acutely lethal as determined by bioassay or other approved procedure. Mixing zones may be delineated for the purpose of guiding sample collection procedures and to determine permitted effluent limits. The size of the chronic mixing zone in rivers and streams shall not to exceed 2500 feet and the size of an acute mixing zone shall not exceed 50% of stream width nor have a residency time of greater than 15 minutes. Streams with a flow equal to or less than twice the flow of a point source discharge may be considered to be totally mixed. The size of the chronic mixing zone in lakes and reservoirs shall not exceed 200 feet and the size of an acute mixing zone shall not exceed

35 feet. Domestic wastewater effluents discharged to mixing zones shall meet effluent requirements specified in R317-1-3.

5.1 Individual Mixing Zones. Individual mixing zones may be further limited or disallowed in consideration of the following factors in the area affected by the discharge:

a. Bioaccumulation in fish tissues or wildlife,

b. Biologically important areas such as fish spawning/nursery areas or segments with occurrences of federally listed threatened or endangered species,

c. Potential human exposure to pollutants resulting from drinking water or recreational activities,

d. Attraction of aquatic life to the effluent plume, where toxicity to the aquatic life is occurring.

e. Toxicity of the substance discharged,

f. Zone of passage for migrating fish or other species (including access to tributaries), or

g. Accumulative effects of multiple discharges and mixing zones.

R317-2-6. Use Designations.

The Board as required by Section 19-5-110, shall group the waters of the state into classes so as to protect against controllable pollution the beneficial uses designated within each class as set forth below. Surface waters of the state are hereby classified as shown in R317-2-13.

6.1 Class 1 -- Protected for use as a raw water source for domestic water systems.

a. Class 1A -- Reserved.

b. Class 1B -- Reserved.

c. Class 1C -- Protected for domestic purposes with prior treatment by treatment processes as required by the Utah Division of Drinking Water

6.2 Class 2 -- Protected for recreational use and aesthetics.

a. Class 2A -- Protected for frequent primary contact recreation where there is a high likelihood of ingestion of water or a high degree of bodily contact with the water. Examples include, but are not limited to, swimming, rafting, kayaking, diving, and water skiing.

b. Class 2B -- Protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is a low likelihood of ingestion of water or a low degree of bodily contact with the water. Examples include, but are not limited to, wading, hunting, and fishing.

6.3 Class 3 -- Protected for use by aquatic wildlife.

a. Class 3A -- Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain.

b. Class 3B -- Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.

c. Class 3C -- Protected for nongame fish and other aquatic life, including the necessary aquatic organisms in their food chain.

d. Class 3D -- Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C, including the necessary aquatic organisms in their food chain.

e. Class 3E -- Severely habitat-limited waters. Narrative standards will be applied to protect these waters for aquatic wildlife.

6.4 Class 4 -- Protected for agricultural uses including irrigation of crops and stock watering.

6.5 Class 5 -- The Great Salt Lake.

a. Class 5A Gilbert Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation south of the Union Pacific Causeway, excluding all of the Farmington Bay south of the Antelope Island Causeway and salt evaporation ponds.

Beneficial Uses -- Protected for frequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

b. Class 5B Gunnison Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and west of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

c. Class 5C Bear River Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and east of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

d. Class 5D Farmington Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation east of Antelope Island and south of the Antelope Island Causeway, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

e. Class 5E Transitional Waters along the Shoreline of the Great Salt Lake Geographical Boundary -- All waters below approximately 4,208-foot elevation to the current lake elevation of the open water of the Great Salt Lake receiving their source water from naturally occurring springs and streams, impounded wetlands, or facilities requiring a UPDES permit. The geographical areas of these transitional waters change corresponding to the fluctuation of open water elevation.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

R317-2-7. Water Quality Standards.

7.1 Application of Standards

a. The numeric criteria listed in R317-2-14 shall apply to each of the classes assigned to waters of the State as specified in R317-2-6. It shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated, except as provided in R317-1-3.1.

b. At a minimum, assessment of the beneficial use support for waters of the state will be conducted biennially and available for a 30-day period of public comment and review. Monitoring locations and target indicators of water quality standards shall be prioritized and published yearly. For water quality assessment purposes, up to 10 percent of the representative samples may exceed the minimum or maximum criteria for dissolved oxygen, pH, E. coli, total dissolved solids, and temperature, including situations where such criteria have been adopted on a site-specific basis.

c. Site-specific standards may be adopted by rulemaking where biomonitoring data, bioassays, or other scientific analyses indicate that the statewide criterion is over or under protective of the designated uses or where natural or un-alterable conditions or other factors as defined in 40 CFR 131.10(g) prevent the attainment of the statewide criteria as prescribed in Subsections R317-2-7.2, and R317-2-7.3, and Section R317-2-14.

7.2 Narrative Standards

It shall be unlawful, and a violation of these rules, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as

unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures; or determined by biological assessments in Subsection R317-2-7.3.

7.3 Biological Water Quality Assessment and Criteria

Waters of the State shall be free from human-induced stressors which will degrade the beneficial uses as prescribed by the biological assessment processes and biological criteria set forth below:

a. Quantitative biological assessments may be used to assess whether the purposes and designated uses identified in R317-2-6 are supported.

b. The results of the quantitative biological assessments may be used for purposes of water quality assessment, including, but not limited to, those assessments required by 303(d) and 305(b) of the federal Clean Water Act (33 U.S.C. 1313(d) and 1315(b)).

c. Quantitative biological assessments shall use documented methods that have been subject to technical review and produce consistent, objective and repeatable results that account for methodological uncertainty and natural environmental variability.

d. If biological assessments reveal a biologically degraded water body, specific pollutants responsible for the degradation will not be formally published (i.e., Biennial Integrated Report, TMDL) until a thorough evaluation of potential causes, including nonchemical stressors (e.g., habitat degradation or hydrological modification or criteria described in 40 CFR 131.10 (g)(1 - 6) as defined by the Use Attainability Analysis process), has been conducted.

R317-2-8. Protection of Downstream Uses.

All actions to control waste discharges under these rules shall be modified as necessary to protect downstream designated uses.

R317-2-9. Intermittent Waters.

Failure of a stream to meet water quality standards when stream flow is either unusually high or less than the 7-day, 10-year minimum flow shall not be cause for action against persons discharging wastes which meet both the requirements of R317-1 and the requirements of applicable permits.

R317-2-10. Laboratory and Field Analyses.

10.1 Laboratory Analyses

All laboratory examinations of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures as approved by the Director by the Utah Office of State Health Laboratory or by a laboratory certified by the Utah Department of Health.

10.2 Field Analyses

All field analyses to determine compliance with these rules shall be conducted in accordance with standard procedures specified by the Utah Division of Water Quality.

R317-2-11. Public Participation.

Public hearings will be held to review all proposed revisions of water quality standards, designations and classifications, and public meetings may be held for consideration of discharge requirements set to protect water uses under assigned classifications.

R317-2-12. Category 1 and Category 2 Waters.

12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

1. Category 2 Waters as listed in R317-2-12.2.

2. Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage

Calf Creek and tributaries, from confluence with Escalante River to headwaters.

Sand Creek and tributaries, from confluence with Escalante River to headwaters.

Mamie Creek and tributaries, from confluence with Escalante River to headwaters.

Deer Creek and tributaries, from confluence with Boulder Creek to headwaters (Garfield County).

Indian Creek and tributaries, through Newspaper Rock State Park to headwaters.

2. Green River Drainage

Price River (Lower Fish Creek from confluence with White River to Scofield Dam.

Range Creek and tributaries, from confluence with Green River to headwaters.

Strawberry River and tributaries, from confluence with Red Creek to headwaters.

Ashley Creek and tributaries, from Steinaker diversion to headwaters.

Jones Hole Creek and tributaries, from confluence with Green River to headwaters.

Green River, from state line to Flaming Gorge Dam.

Tollivers Creek, from confluence with Green River to headwaters.

Allen Creek, from confluence with Green River to headwaters.

3. Virgin River Drainage

North Fork Virgin River and tributaries, from confluence with East Fork Virgin River to headwaters.

East Fork Virgin River and tributaries from confluence with North Fork Virgin River to headwaters.

4. Kanab Creek Drainage

Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters.

5. Bear River Drainage

Swan Creek and tributaries, from Bear Lake to headwaters.

North Eden Creek, from Upper North Eden Reservoir to headwaters.

Big Creek and tributaries, from Big Ditch diversion to headwaters.

Woodruff Creek and tributaries, from Woodruff diversion to headwaters.

6. Weber River Drainage

Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters.

Hardscrabble Creek and tributaries, from confluence with East Canyon Creek to headwaters.

Chalk Creek and tributaries, from Main Street in Coalville to headwaters.

Weber River and tributaries, from Utah State Route 32 near Oakley to headwaters.

7. Jordan River Drainage

City Creek and tributaries, from City Creek Water Treatment Plant to headwaters (Salt Lake County).

Emigration Creek and tributaries, from Hogle Zoo to headwaters (Salt Lake County).

Red Butte Creek and tributaries, from Foothill Boulevard

in Salt Lake City to headwaters.

Parley's Creek and tributaries, from 13th East in Salt Lake City to headwaters.

Mill Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Big Cottonwood Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Little Willow Creek and tributaries, from diversion to headwaters (Salt Lake County.)

Bell Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters (Salt Lake County).

South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters (Salt Lake County).

8. Provo River Drainage

Upper Falls drainage above Provo City diversion (Utah County).

Bridal Veil Falls drainage above Provo City diversion (Utah County).

Lost Creek and tributaries, above Provo City diversion (Utah County).

9. Sevier River Drainage

Chicken Creek and tributaries, from diversion at canyon mouth to headwaters.

Pigeon Creek and tributaries, from diversion to headwaters.

East Fork of Sevier River and tributaries, from Kingston diversion to headwaters.

Parowan Creek and tributaries, from Parowan City to headwaters.

Summit Creek and tributaries, from Summit City to headwaters.

Braffits Creek and tributaries, from canyon mouth to headwaters.

Right Hand Creek and tributaries, from confluence with Coal Creek to headwaters.

10. Raft River Drainage

Clear Creek and tributaries, from state line to headwaters (Box Elder County).

Birch Creek (Box Elder County), from state line to headwaters.

Cotton Thomas Creek from confluence with South Junction Creek to headwaters.

11. Western Great Salt Lake Drainage

All streams on the south slope of the Raft River Mountains above 7000' mean sea level.

Donner Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Bettridge Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Clover Creek, from diversion to headwaters.

All surface waters on public land on the Deep Creek Mountains.

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Haight Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Haight Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

12.2 Category 2 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 2 Waters:

a. Green River Drainage

Deer Creek, a tributary of Huntington Creek, from the forest boundary to 4800 feet upstream.

Electric Lake.

R317-2-13. Classification of Waters of the State (see R317-2-6).

a. Colorado River Drainage

13.1 Upper Colorado River Basin

TABLE

Paria River and tributaries, from state line to headwaters			2B	3C	4
All tributaries to Lake Powell, except as listed below			2B	3B	4
Tributaries to Escalante River from confluence with Boulder Creek to headwaters, including Boulder Creek			2B	3A	4
Dirty Devil River and tributaries, from Lake Powell to Fremont River			2B	3C	4
Deer Creek and tributaries, from confluence with Boulder Creek to headwaters			2B	3A	4
Fremont River and tributaries, from confluence with Muddy Creek to Capitol					
Reef National Park, except as listed below	1C		2B	3C	4
Pleasant Creek and tributaries, from confluence with Fremont River to East boundary of Capitol Reef National Park			2B	3C	4
Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters	1C		2B	3A	
Fremont River and tributaries, through Capitol Reef National Park to headwaters	1C	2A		3A	4
Muddy Creek and tributaries, from confluence with Fremont River to Highway U-10 crossing, except as listed below			2B	3C	4
Quitchupah Creek and Tributaries, from Highway U-10 crossing to headwaters			2B	3A	4
Ivie Creek and tributaries, from Highway U-10 to headwaters			2B	3A	4
Muddy Creek and tributaries, from Highway U-10 crossing to headwaters	1C		2B	3A	4
San Juan River and Tributaries, from Lake Powell to state line except As listed below:	1C	2A		3B	4
Johnson Creek and tributaries, from confluence with Recapture Creek to headwaters	1C		2B	3A	4
Verdure Creek and tributaries, from Highway US-191 crossing to headwaters			2B	3A	4
North Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C		2B	3A	4
South Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C		2B	3A	4
Spring Creek and tributaries, from confluence with Vega					

Creek to headwaters		2B	3A		4
Montezuma Creek and tributaries, from U.S. Highway 191 to headwaters	1C	2B	3A		4
Colorado River and tributaries, from Lake Powell to state line except as listed below	1C	2A		3B	4
Indian Creek and tributaries, through Newspaper Rock State Park to headwaters	1C	2B	3A		4
Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters		2B		3C	4
Mill Creek and tributaries, from confluence with Colorado River to headwaters	1C	2B	3A		4
Dolores River and tributaries, from confluence with Colorado River to state line		2B		3C	4
Roc Creek and tributaries, from confluence with Dolores River to headwaters		2B	3A		4
LaSal Creek and tributaries, from state line to headwaters		2B	3A		4
Lion Canyon Creek and tributaries, from state line to headwaters		2B	3A		4
Little Dolores River and tributaries, from confluence with Colorado River to state line		2B		3C	4
Bitter Creek and tributaries, from confluence with Colorado River to headwaters		2B		3C	4

b. Green River Drainage

TABLE

Green River and tributaries, from confluence with Colorado River to state line except as listed below:	1C	2A		3B	4
Thompson Creek and tributaries from Interstate Highway 70 to headwaters		2B		3C	4
San Rafael River and tributaries, from confluence with Green River to confluence with Ferron Creek		2B		3C	4
Ferron Creek and tributaries, from confluence with San Rafael River to Millsite Reservoir		2B		3C	4
Ferron Creek and tributaries, from Millsite Reservoir to headwaters	1C	2B	3A		4
Huntington Creek and tributaries, from confluence with Cottonwood Creek to Highway U-10 crossing		2B		3C	4
Huntington Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A		4
Cottonwood Creek and tributaries, from confluence with Huntington Creek to Highway U-57 crossing		2B		3C	4
Cottonwood Creek and tributaries, from Highway U-57 crossing to headwaters	1C	2B	3A		4
Cottonwood Canal, Emery County	1C	2B		3E	4
Price River and tributaries, from confluence with Green River to Carbon Canal Diversion at Price City Golf Course		2B		3C	4
Except as listed below Grassy Trail Creek and tributaries, from Grassy Trail Creek Reservoir to headwaters	1C	2B	3A		4
Price River and tributaries, from Carbon Canal Diversion at Price City Golf Course to Price City Water Treatment Plant intake.		2B	3A		4
Price River and tributaries, from Price City Water Treatment Plant intake to headwaters	1C	2B	3A		4
Range Creek and tributaries, from confluence with Green River to Range Creek Ranch		2B	3A		4
Range Creek and tributaries, from Range Creek Ranch to headwaters	1C	2B	3A		4
Rock Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Nine Mile Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Pariette Draw and tributaries, from confluence with Green River to headwaters		2B	3B	3D	4
Willow Creek and tributaries (Uintah County), from confluence with Green River to headwaters		2B	3A		4
White River and tributaries, from confluence with Green River to state line, except as listed below		2B	3B		4
Bitter Creek and Tributaries from White River to Headwaters		2B	3A		4
Duchesne River and tributaries, from confluence with Green River to Myton Water Treatment Plant intake, except as listed below		2B	3B		4
Uinta River and tributaries, From confluence with Duchesne River to Highway US-40 crossing		2B	3B		4
Uinta River and tributaries, From Highway US-4- crossing to headwaters		2B	3A		4
Power House Canal from Confluence with Uinta River to headwaters		2B	3A		4
Whiterocks River and Canal, From Tridell Water Treatment Plant to Headwaters	1C	2B	3A		4
Duchesne River and tributaries, from Myton Water Treatment Plant intake to headwaters	1C	2B	3A		4
Lake Fork River and tributaries, from confluence with Duchesne River to headwaters	1C	2B	3A		4

Lake Fork Canal from Dry Gulch Canal Diversion to Moon Lake	1C	2B		3E	4
Dry Gulch Canal, from Myton Water Treatment Plant to Lake Fork Canal	1C	2B		3E	4
Ashley Creek and tributaries, from confluence with Green River to Steinaker diversion		2B	3B		4
Ashley Creek and tributaries, from Steinaker diversion to headwaters	1C	2B	3A		4
Big Brush Creek and tributaries, from confluence with Green River to Tyzack (Red Fleet) Dam		2B	3B		4
Big Brush Creek and tributaries, from Tyzack (Red Fleet) Dam to headwaters	1C	2B	3A		4
Jones Hole Creek and tributaries, from confluence with Green River to headwaters		2B	3A		
Diamond Gulch Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Pot Creek and tributaries, from Crouse Reservoir to headwaters		2B	3A		4
Green River and tributaries, from Utah-Colorado state line to Flaming Gorge Dam except as listed below:	2A		3A		4
Sears Creek and tributaries, Daggett County		2B	3A		
Tolivers Creek and tributaries, Daggett County		2B	3A		
Red Creek and tributaries, from confluence with Green River to state line		2B		3C	4
Jackson Creek and tributaries, Daggett County		2B	3A		
Davenport Creek and tributaries, Daggett County		2B	3A		
Goslin Creek and tributaries, Daggett County		2B	3A		
Gorge Creek and tributaries, Daggett County		2B	3A		
Beaver Creek and tributaries, Daggett County		2B	3A		
O-Wi-Yu-Kuts Creek and tributaries, Daggett County		2B	3A		
Tributaries to Flaming Gorge Reservoir, except as listed below		2B	3A		4
Birch Spring Draw and tributaries, from Flaming Gorge Reservoir to headwaters		2B		3C	4
Spring Creek and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3A		
All Tributaries of Flaming Gorge Reservoir from Utah-Wyoming state line to headwaters		2B	3A		4

13.2 Lower Colorado River Basin

a. Virgin River Drainage

TABLE

Beaver Dam Wash and tributaries, from Motoqua to headwaters		2B	3B		4
Virgin River and tributaries from state line to Quail Creek diversion except as listed below		2B	3B		4
Santa Clara River from confluence with Virgin River to Gunlock Reservoir	1C	2B	3B		4
Santa Clara River and tributaries, from Gunlock Reservoir to headwaters		2B	3A		4
Leed's Creek, from confluence with Quail Creek to headwaters		2B	3A		4
Quail Creek from Quail Creek Reservoir to headwaters	1C	2B	3A		4
Ash Creek and tributaries, from confluence with Virgin River to Ash Creek Reservoir		2B	3A		4
Ash Creek and tributaries, From Ash Creek Reservoir to headwaters		2B	3A		4
Virgin River and tributaries, from the Quail Creek diversion to headwaters, except as listed below	1C	2B		3C	4
North Fork Virgin River and tributaries	1C	2A	3A		4
East Fork Virgin River, from town of Glendale to headwaters		2B	3A		4
Kolob Creek, from confluence with Virgin River to headwaters		2B	3A		4

b. Kanab Creek Drainage

TABLE

Kanab Creek and tributaries, from state line to irrigation diversion at confluence with Reservoir Canyon		2B		3C	4
Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters		2B	3A		4
Johnson Wash and tributaries, from state line to confluence with Skutumpah Canyon		2B		3C	4
Johnson Wash and tributaries, from confluence with Skutumpah Canyon to headwaters		2B	3A		4

13.3 Bear River Basin

a. Bear River Drainage

TABLE

Bear River and tributaries, from Great Salt Lake to Utah-Idaho border, except as listed below:		2B	3B	3D	4
Perry Canyon Creek from U.S. Forest boundary to headwaters		2B	3A		4
Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (the Mayor's Pond)		2B		3C	4
Box Elder Creek, from Brigham					

City Reservoir (the Mayor's Pond) to headwaters		2B	3A		4
Salt Creek, from confluence with Bear River to Crystal Hot Springs		2B	3B	3D	
Malad River and tributaries, from confluence with Bear River to state line		2B	3C		
Little Bear River and tributaries, from Cutler Reservoir to headwaters		2B	3A	3D	4
Logan River and tributaries, from Cutler Reservoir to headwaters		2B	3A	3D	4
Blacksmith Fork and tributaries, from confluence with Logan River to headwaters		2B	3A		4
Newton Creek and tributaries, from Cutler Reservoir to Newton Reservoir		2B	3A		4
Clarkston Creek and tributaries, from Newton Reservoir to headwaters		2B	3A		4
Birch Creek and tributaries, from confluence with Clarkston Creek to headwaters		2B	3A		4
Summit Creek and tributaries, from confluence with Bear River to headwaters		2B	3A		4
Cub River and tributaries, from confluence with Bear River to state line, except as listed below:		2B	3B		4
High Creek and tributaries, from confluence with Cub River to headwaters		2B	3A		4
All tributaries to Bear Lake from Bear Lake to headwaters, except as listed below		2B	3A		4
Swan Springs tributary to Swan Creek	1C	2B	3A		
Bear River and tributaries in Rich County		2B	3A		4
Bear River and tributaries, from Utah-Wyoming state line to headwaters (Summit County)		2B	3A		4
Mill Creek and tributaries, from state line to headwaters (Summit County)		2B	3A		4

13.4 Weber River Basin
a. Weber River Drainage

TABLE

Willard Creek, from Willard Bay Reservoir to headwaters		2B	3A		4
Weber River, from Great Salt Lake to Slaterville diversion, except as listed below:		2B	3C	3D	4
Four Mile Creek from I-15 To headwaters		2B	3A		4
Weber River and tributaries, from Slaterville diversion to Stoddard diversion, except as listed below		2B	3A		4
Ogden River and tributaries, From confluence with Weber River To Pineview Dam, except as listed Below	2A		3A		4
Wheeler Creek from Confluence with Ogden River to headwaters	1C	2B	3A		4
All tributaries to Pineview Reservoir	1C	2B	3A		4
Strongs Canyon Creek and Tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Burch Creek and tributaries, from Harrison Boulevard in Ogden to Headwaters	1C	2B	3A		
Spring Creek and tributaries, From U.S. National Forest Boundary to headwaters	1C	2B	3A		4
Weber River and tributaries, from Stoddard diversion to headwaters	1C	2B	3A		4

13.5 Utah Lake-Jordan River Basin
a. Jordan River Drainage

TABLE

Jordan River, from Farmington Bay to North Temple Street, Salt Lake City		2B	3B *	3D	4
State Canal, from Farmington Bay to confluence with the Jordan River		2B	3B *	3D	4
Jordan River, from North Temple Street in Salt Lake City to confluence with Little Cottonwood Creek		2B	3B *		4
Surplus Canal from Great Salt Lake to the diversion from the Jordan River		2B	3B *	3D	4
Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion		2B	3A		4
Jordan River, from Narrows Diversion to Utah Lake	1C	2B	3B		4
City Creek, from Memory Park in Salt Lake City to City Creek Water Treatment Plant		2B	3A		
City Creek, from City Creek Water Treatment Plant to headwaters	1C	2B	3A		
Red Butte Creek and tributaries from Liberty Park pond inlet to Red Butte Reservoir		2B	3A		4
Red Butte Creek and tributaries, from Red Butte Reservoir to headwaters	1C	2B	3A		
Emigration Creek and tributaries, from 1100 East in Salt Lake City to headwaters		2B	3A		4
Parley's Creek and tributaries, from 1300 East in Salt Lake City to Mountain Dell Reservoir	1C	2B	3A		
Parley's Creek and tributaries, from Mountain Dell Reservoir to headwaters	1C	2B	3A		
Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate Highway 15		2B	3C		4
Mill Creek (Salt Lake County) and tributaries from Interstate					

Highway 15 to headwaters		2B	3A	4
Big Cottonwood Creek and tributaries, from confluence with Jordan River to Big Cottonwood Water Treatment Plant		2B	3A	4
Big Cottonwood Creek and tributaries, from Big Cottonwood Water Treatment Plant to headwaters	1C	2B	3A	
Deaf Smith Canyon Creek and tributaries	1C	2B	3A	4
Little Cottonwood Creek and tributaries, from confluence with Jordan River to Metropolitan Water Treatment Plant		2B	3A	4
Little Cottonwood Creek and tributaries, from Metropolitan Water Treatment Plant to headwaters	1C	2B	3A	
Bell Canyon Creek and tributaries, from lower Bell's Canyon reservoir to headwaters	1C	2B	3A	
Little Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
Big Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
All permanent streams on east slope of Oquirrh Mountains (Coon, Barney's, Bingham, Butterfield, and Rose Creeks)		2B	3D	4
Kersey Creek from confluence of C-7 Ditch to headwaters		2B	3D	

* Site specific criteria for dissolved oxygen. See Table 2.14.5.

b. Provo River Drainage

TABLE

Provo River and tributaries, from Utah Lake to Murdock diversion		2B	3A	4
Provo River and tributaries, from Murdock Diversion to headwaters, except as listed below	1C	2B	3A	4
Upper Falls drainage above Provo City diversion	1C	2B	3A	
Bridal Veil Falls drainage above Provo City diversion	1C	2B	3A	
Lost Creek and tributaries above Provo City diversion	1C	2B	3A	

c. Utah Lake Drainage

TABLE

Dry Creek and tributaries (above Alpine), from U.S. National Forest boundary to headwaters		2B	3A	4
American Fork Creek and tributaries, from diversion at mouth of American Fork Canyon to headwaters		2B	3A	4
Spring Creek and tributaries, from Utah Lake near Lehi to headwaters		2B	3A	4
Lindon Hollow Creek and tributaries, from Utah Lake to headwaters		2B	3B	4
Rock Canyon Creek and tributaries (East of Provo) from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Mill Race (except from Interstate Highway 15 to the Provo City WWTP discharge) and tributaries from Utah Lake to headwaters		2B	3B	4
Mill Race from Interstate Highway 15 to the Provo City wastewater treatment plant discharge		2B	3B	4
Spring Creek and tributaries from Utah Lake (Provo Bay) to 50 feet upstream from the east boundary of the Industrial Parkway Road Right-of-way		2B	3B	4
Tributary to Spring Creek (Utah County) which receives the Springville City WWTP effluent from confluence with Spring Creek to headwaters		2B	3D	4
Spring Creek and tributaries from 50 feet upstream from the east boundary of the Industrial Parkway Road right-of-way to the headwaters		2B	3A	4
Ironton Canal from Utah Lake (Provo Bay) to the east boundary of the Denver and Rio Grande Western Railroad right-of-way		2B	3C	4
Ironton Canal from the east boundary of the Denver and Rio Grande Western Railroad right-of-way to the point of diversion from Spring Creek		2B	3A	4
Hobble Creek and tributaries, from Utah Lake to headwaters		2B	3A	4
Dry Creek and tributaries from Utah Lake (Provo Bay) to Highway-US 89		2B	3E	4
Dry Creek and tributaries from Highway-US 89 to headwaters		2B	3A	4
Spanish Fork River and tributaries, from Utah Lake to diversion at Moark Junction		2B	3B 3D	4
Spanish Fork River and tributaries, from diversion at Moark Junction to headwaters		2B	3A	4
Benjamin Slough and tributaries from Utah Lake to headwaters, except as listed below		2B	3B	4
Beer Creek (Utah County) from 4850 West (in NE1/4NE1/4 sec. 36, T.8 S., R.1 E.) to headwaters		2B	3C	4
Salt Creek, from Nephi diversion to headwaters		2B	3A	4
Currant Creek, from mouth of Goshen Canyon to Mona Reservoir		2B	3A	4
Currant Creek, from Mona Reservoir to headwaters		2B	3A	4
Peteetneet Creek and tributaries, from irrigation diversion above Maple Dell to headwaters		2B	3A	4
Summit Creek and tributaries (above Santaquin), from U.S.				

National Forest boundary to headwaters	2B	3A		4
All other permanent streams entering Utah Lake	2B		3B	4

13.6 Sevier River Basin
a. Sevier River Drainage

TABLE

Sevier River and tributaries from Sevier Lake to Gunnison Bend Reservoir to U.S.National Forest boundary except as listed below	2B		3C	4
Beaver River and tributaries from Minersville City to headwaters	2B	3A		4
Little Creek and tributaries, From irrigation diversion to Headwaters	2B	3A		4
Pinto Creek and tributaries, From Newcastle Reservoir to Headwaters	2B	3A		4
Coal Creek and tributaries	2B	3A		4
Summit Creek and tributaries	2B	3A		4
Parowan Creek and tributaries	2B	3A		4
Tributaries to Sevier River from Sevier Lake to Gunnison Bend Reservoir from U.S. National Forest boundary to headwaters, including:	2B	3A		4
Pioneer Creek and tributaries, Millard County	2B	3A		4
Chalk Creek and tributaries, Millard County	2B	3A		4
Meadow Creek and tributaries, Millard County	2B	3A		4
Corn Creek and tributaries, Millard County	2B	3A		4
Sevier River and tributaries below U.S. National Forest boundary from Gunnison Bend Reservoir to Annabella Diversion except as listed below	2B		3B	4
Oak Creek and tributaries, Millard County	2B	3A		4
Round Valley Creek and tributaries, Millard County	2B	3A		4
Judd Creek and tributaries, Juab County	2B	3A		4
Meadow Creek and tributaries, Juab County	2B	3A		4
Cherry Creek and tributaries Juab County	2B	3A		4
Tanner Creek and tributaries, Juab County	2B		3E	4
Baker Hot Springs, Juab County	2B		3D	4
Chicken Creek and tributaries, Juab County	2B	3A		4
San Pitch River and tributaries, from confluence with Sevier River to Highway U-132 crossing except As listed below:	2B		3C 3D	4
Twelve Mile Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A		4
Six Mile Creek and tributaries, Sanpete County	2B	3A		4
Manti Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A		4
Ephraim Creek (Cottonwood Creek) and tributaries, from U.S. Forest Service to headwaters	2B	3A		4
Oak Creek and tributaries, from U.S. Forest Service boundary near Spring City to headwaters	2B	3A		4
Fountain Green Creek and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A		4
San Pitch River and tributaries, from Highway U-132 crossing to headwaters	2B	3A		4
Tributaries to Sevier River from Gunnison Bend Reservoir to Annabelle Diversion from U.S. National Forest boundary to headwaters	2B	3A		4
Sevier River and tributaries, from Annabella diversion to headwaters	2B	3A		4
Monroe Creek and tributaries, from diversion to headwaters	2B	3A		4
Little Creek and tributaries, from irrigation diversion to headwaters	2B	3A		4
Pinto Creek and tributaries, from Newcastle Reservoir to headwaters	2B	3A		4
Coal Creek and tributaries	2B	3A		4
Summit Creek and tributaries	2B	3A		4
Parowan Creek and tributaries	2B	3A		4
Duck Creek and tributaries	1C	2B	3A	4

13.7 Great Salt Lake Basin
a. Western Great Salt Lake Drainage

TABLE

Grouse Creek and tributaries, Box Elder County	2B	3A		4
Muddy Creek and tributaries, Box Elder County	2B	3A		4
Dove Creek and tributaries, Box Elder County	2B	3A		4
Pine Creek and tributaries, Box Elder County	2B	3A		4
Rock Creek and tributaries, Box Elder County	2B	3A		4
Fisher Creek and tributaries, Box Elder County	2B	3A		4
Dunn Creek and tributaries, Box Elder County	2B	3A		4
Indian Creek and tributaries, Box Elder County	2B	3A		4
Tenmile Creek and tributaries, Box Elder County	2B	3A		4

Curlew (Deep) Creek, Box Elder County		2B	3A	4
Blue Creek and tributaries, from Great Salt Lake to Blue Creek Reservoir		2B	3D	4
Blue Creek and tributaries, from Blue Creek Reservoir to headwaters		2B	3B	4
All perennial streams on the east slope of the Pilot Mountain Range	1C	2B	3A	4
Donner Creek and tributaries, from irrigation diversion to Utah-Nevada state line		2B	3A	4
Bettridge Creek and tributaries, from irrigation diversion to Utah-Nevada state line		2B	3A	4
North Willow Creek and tributaries, Tooele County		2B	3A	4
South Willow Creek and tributaries, Tooele County		2B	3A	4
Hickman Creek and tributaries, Tooele County		2B	3A	4
Barlow Creek and tributaries, Tooele County		2B	3A	4
Clover Creek and tributaries, Tooele County		2B	3A	4
Faust Creek and tributaries, Tooele County		2B	3A	4
Vernon Creek and tributaries, Tooele County		2B	3A	4
Ophir Creek and tributaries, Tooele County		2B	3A	4
Soldier Creek and Tributaries from the Drinking Water Treatment Facility Headwaters, Tooele County	1C	2B	3A	4
Settlement Canyon Creek and tributaries, Tooele County		2B	3A	4
Middle Canyon Creek and tributaries, Tooele County		2B	3A	4
Tank Wash and tributaries, Tooele County		2B	3A	4
Basin Creek and tributaries, Juab and Tooele Counties		2B	3A	4
Thomas Creek and tributaries, Juab County		2B	3A	4
Indian Farm Creek and tributaries, Juab County		2B	3A	4
Cottonwood Creek and tributaries, Juab County		2B	3A	4
Red Cedar Creek and tributaries, Juab County		2B	3A	4
Granite Creek and tributaries, Juab County		2B	3A	4
Trout Creek and tributaries, Juab County		2B	3A	4
Birch Creek and tributaries, Juab County		2B	3A	4
Deep Creek and tributaries, from Rock Spring Creek to headwaters, Juab and Tooele Counties		2B	3A	4
Cold Spring, Juab County		2B	3C 3D	
Cane Spring, Juab County		2B	3C 3D	
Lake Creek, from Garrison (Pruess) Reservoir to Nevada state line		2B 3A		4
Snake Creek and tributaries, Millard County		2B	3B	4
Salt Marsh Spring Complex, Millard County		2B 3A		
Twin Springs, Millard County		2B	3B	
Tule Spring, Millard County		2B	3C 3D	
Coyote Spring Complex, Millard County		2B	3C 3D	
Hamblin Valley Wash and tributaries, from Nevada state line to headwaters (Beaver and Iron Counties)		2B	3D	4
Indian Creek and tributaries, Beaver County, from Indian Creek Reservoir to headwaters		2B 3A		4
Shoal Creek and tributaries, Iron County		2B 3A		4

b. Farmington Bay Drainage

TABLE

Corbett Creek and tributaries, from Highway to headwaters		2B 3A		4
Kays Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B	4
North Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters		2B 3A		4
Middle Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A		4
South Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A		4
Snow Creek and tributaries		2B	3C	4
Holmes Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B	4
Holmes Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A		4
Baer Creek and tributaries, from Farmington Bay to Interstate Highway 15		2B	3C	4
Baer Creek and tributaries, from Interstate Highway 15 to Highway US-89		2B	3B	4
Baer Creek and tributaries, from Highway US-89 to headwaters	1C	2B 3A		4
Shepard Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A		4
Farmington Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B	3B	4
Farmington Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B 3A		4

Rudd Creek and tributaries, from Davis aqueduct to headwaters		2B	3A	4
Steed Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Davis Creek and tributaries, from Highway US-89 to headwaters		2B	3A	4
Lone Pine Creek and tributaries, from Highway US-89 to headwaters		2B	3A	4
Ricks Creek and tributaries, from Highway I-15 to headwaters	1C	2B	3A	4
Barnard Creek and tributaries, from Highway US-89 to headwaters		2B	3A	4
Parrish Creek and tributaries, from Davis Aqueduct to headwaters		2B	3A	4
Deuel Creek and tributaries, (Centerville Canyon) from Davis Aqueduct to headwaters		2B	3A	4
Stone Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B	3A	4
Stone Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Barton Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
Mill Creek (Davis County) and tributaries, from confluence with State Canal to U.S. National Forest boundary		2B	3B	4
Mill Creek (Davis County) and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
North Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
Howard Slough		2B	3C	4
Hooper Slough		2B	3C	4
Willard Slough		2B	3C	4
Willard Creek to Headwaters	1C	2B	3A	4
Chicken Creek to Headwaters	1C	2B	3A	4
Cold Water Creek to Headwaters	1C	2B	3A	4
One House Creek to Headwaters	1C	2B	3A	4
Garner Creek to Headwaters	1C	2B	3A	4

13.8 Snake River Basin

a. Raft River Drainage (Box Elder County)

TABLE

Raft River and tributaries		2B	3A	4
Clear Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
Onemile Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
George Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
Johnson Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
Birch Creek and tributaries, from state line to headwaters		2B	3A	4
Pole Creek and tributaries, from state line to headwaters		2B	3A	4
Goose Creek and tributaries		2B	3A	4
Hardesty Creek and tributaries, from state line to headwaters		2B	3A	4
Meadow Creek and tributaries, from state line to headwaters		2B	3A	4

13.9 All irrigation canals and ditches statewide, except as otherwise designated: 2B, 3E, 4

13.10 All drainage canals and ditches statewide, except as otherwise designated: 2B, 3E

13.11 National Wildlife Refuges and State Waterfowl Management Areas, and other Areas Associated with the Great Salt Lake

TABLE

Bear River National Wildlife Refuge, Box Elder County		2B	3B	3D
Bear River Bay				
Open Water below approximately 4,208 ft.				5C
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.		2B	3B	3D
Brown's Park Waterfowl Management Area, Daggett County		2B	3A	3D
Clear Lake Waterfowl Management Area, Millard County		2B	3C	3D
Desert Lake Waterfowl Management Area, Emery County		2B	3C	3D
Farmington Bay Waterfowl Management Area, Davis and Salt Lake Counties		2B	3C	3D
Farmington Bay				
Open Water below approximately 4,208 ft.				5D
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.		2B	3B	3D
Fish Springs National Wildlife Refuge, Juab County		2B	3C	3D
Harold Crane Waterfowl Management Area, Box Elder County		2B	3C	3D
Gilbert Bay				
Open Water below approximately 4,208 ft.				5A
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.		2B	3B	3D
Gunnison Bay				
Open Water below approximately 4,208 ft.				5B
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.		2B	3B	3D
Howard Slough Waterfowl Management Area, Weber County		2B	3C	3D
Locomotive Springs Waterfowl				

Management Area, Box Elder County	2B	3B	3D	
Ogden Bay Waterfowl Management Area, Weber County	2B		3C	3D
Ouray National Wildlife Refuge, Uintah County	2B	3B	3D	
Powell Slough Waterfowl Management Area, Utah County	2B		3C	3D
Public Shooting Grounds Waterfowl Management Area, Box Elder County	2B		3C	3D
Salt Creek Waterfowl Management Area, Box Elder County	2B		3C	3D
Stewart Lake Waterfowl Management Area, Uintah County	2B	3B	3D	
Timpie Springs Waterfowl Management Area, Tooele County	2B	3B	3D	

13.12 Lakes and Reservoirs. All lakes and any reservoirs greater than 10 acres not listed in 13.12 are assigned by default to the classification of the stream with which they are associated.

a. Beaver County

TABLE

Anderson Meadow Reservoir	2B	3A			4
Manderfield Reservoir	2B	3A			4
LaBaron Reservoir	2B	3A			4
Kent's Lake	2B	3A			4
Minersville Reservoir	2B	3A		3D	4
Puffer Lake	2B	3A			
Three Creeks Reservoir	2B	3A			4

b. Box Elder County

TABLE

Cutler Reservoir (including portion in Cache County)	2B	3B	3D			4
Etna Reservoir	2B	3A				4
Lynn Reservoir	2B	3A				4
Mantua Reservoir	2B	3A				4
Willard Bay Reservoir	1C	2A	3B	3D		4

c. Cache County

TABLE

Hyrum Reservoir	2A	3A			4
Newton Reservoir	2B	3A			4
Porcupine Reservoir	2B	3A			4
Pelican Pond	2B	3B			4
Tony Grove Lake	2B	3A			4

d. Carbon County

TABLE

Grassy Trail Creek Reservoir	1C	2B	3A		4
Olsen Pond	2B	3B			4
Scofield Reservoir	1C	2B	3A		4

e. Daggett County

TABLE

Browne Reservoir	2B	3A			4
Daggett Lake	2B	3A			4
Flaming Gorge Reservoir (Utah portion)	1C	2A	3A		4
Long Park Reservoir	1C	2B	3A		4
Sheep Creek Reservoir	2B	3A			4
Spirit Lake	2B	3A			4
Upper Potter Lake	2B	3A			4

f. Davis County

TABLE

Farmington Ponds	2B	3A			4
Kaysville Highway Ponds	2B	3A			4
Holmes Creek Reservoir	2B		3B		4

g. Duchesne County

TABLE

Allred Lake	2B	3A			4
Atwine Lake	2B	3A			4
Atwood Lake	2B	3A			4
Betsy Lake	2B	3A			4
Big Sandwash Reservoir	1C	2B	3A		4
Bluebell Lake	2B	3A			4
Brown Duck Reservoir	2B	3A			4
Butterfly Lake	2B	3A			4
Cedarview Reservoir	2B	3A			4
Chain Lake #1	2B	3A			4
Chepeta Lake	2B	3A			4
Clements Reservoir	2B	3A			4
Cleveland Lake	2B	3A			4
Cliff Lake	2B	3A			4
Continent Lake	2B	3A			4
Crater Lake	2B	3A			4
Crescent Lake	2B	3A			4
Daynes Lake	2B	3A			4
Dean Lake	2B	3A			4
Doll Lake	2B	3A			4
Drift Lake	2B	3A			4
Elbow Lake	2B	3A			4
Farmer's Lake	2B	3A			4
Fern Lake	2B	3A			4
Fish Hatchery Lake	2B	3A			4
Five Point Reservoir	2B	3A			4
Fox Lake Reservoir	2B	3A			4
Governor's Lake	2B	3A			4
Granddaddy Lake	2B	3A			4
Hoover Lake	2B	3A			4

Island Lake	2B	3A	4
Jean Lake	2B	3A	4
Jordan Lake	2B	3A	4
Kidney Lake	2B	3A	4
Kidney Lake West	2B	3A	4
Lily Lake	2B	3A	4
Midview Reservoir (Lake Boreham)	2B	3B	4
Milk Reservoir	2B	3A	4
Mirror Lake	2B	3A	4
Mohawk Lake	2B	3A	4
Moon Lake	1C 2A	3A	4
North Star Lake	2B	3A	4
Palisade Lake	2B	3A	4
Pine Island Lake	2B	3A	4
Pinto Lake	2B	3A	4
Pole Creek Lake	2B	3A	4
Potter's Lake	2B	3A	4
Powell Lake	2B	3A	4
Pyramid Lake	2A	3A	4
Queant Lake	2B	3A	4
Rainbow Lake	2B	3A	4
Red Creek Reservoir	2B	3A	4
Rudolph Lake	2B	3A	4
Scout Lake	2A	3A	4
Spider Lake	2B	3A	4
Spirit Lake	2B	3A	4
Starvation Reservoir	1C 2A	3A	4
Superior Lake	2B	3A	4
Swasey Hole Reservoir	2B	3A	4
Taylor Lake	2B	3A	4
Thompson Lake	2B	3A	4
Timothy Reservoir #1	2B	3A	4
Timothy Reservoir #6	2B	3A	4
Timothy Reservoir #7	2B	3A	4
Twin Pots Reservoir	1C	2B 3A	4
Upper Stillwater Reservoir	1C	2B 3A	4
X - 24 Lake	2B	3A	4

h. Emery County

TABLE

Cleveland Reservoir	2B	3A	4
Electric Lake	2B	3A	4
Huntington Reservoir	2B	3A	4
Huntington North Reservoir	2A	3B	4
Joe's Valley Reservoir	2A	3A	4
Millsite Reservoir	1C 2A	3A	4

i. Garfield County

TABLE

Barney Lake	2B	3A	4
Cyclone Lake	2B	3A	4
Deer Lake	2B	3A	4
Jacob's Valley Reservoir	2B	3C 3D	4
Lower Bowns Reservoir	2B	3A	4
North Creek Reservoir	2B	3A	4
Panguitch Lake	2B	3A	4
Pine Lake	2B	3A	4
Oak Creek Reservoir (Upper Bowns)	2B	3A	4
Pleasant Lake	2B	3A	4
Posey Lake	2B	3A	4
Purple Lake	2B	3A	4
Raft Lake	2B	3A	4
Row Lake #3	2B	3A	4
Row Lake #7	2B	3A	4
Spectacle Reservoir	2B	3A	4
Tropic Reservoir	2B	3A	4
West Deer Lake	2B	3A	4
Wide Hollow Reservoir	2B	3A	4

j. Iron County

TABLE

Newcastle Reservoir	2B	3A	4
Red Creek Reservoir	2B	3A	4
Yankee Meadow Reservoir	2B	3A	4

k. Juab County

TABLE

Chicken Creek Reservoir	2B	3C 3D	4
Mona Reservoir	2B	3B	4
Sevier Bridge (Yuba) Reservoir	2A	3B	4

l. Kane County

TABLE

Navajo Lake	2B	3A	4

m. Millard County

TABLE

DMAD Reservoir	2B	3B	4
Fools Creek Reservoir	2B	3C 3D	4
Garrison Reservoir (Pruess Lake)	2B	3B	4
Gunnison Bend Reservoir	2B	3B	4

n. Morgan County

TABLE

East Canyon Reservoir	1C 2A	3A	4

Lost Creek Reservoir	1C	2B 3A		4

o. Piute County

TABLE

Barney Reservoir		2B 3A		4
Lower Boxcreek Reservoir		2B 3A		4
Manning Meadow Reservoir		2B 3A		4
Otter Creek Reservoir		2B 3A		4
Piute Reservoir		2B 3A		4
Upper Boxcreek Reservoir		2B 3A		4

p. Rich County

TABLE

Bear Lake (Utah portion)	2A	3A		4
Birch Creek Reservoir		2B 3A		4
Little Creek Reservoir		2B 3A		4
Woodruff Creek Reservoir		2B 3A		4

q. Salt Lake County

TABLE

Decker Lake		2B	3B 3D	4
Lake Mary	1C	2B 3A		
Little Dell Reservoir	1C	2B 3A		
Mountain Dell Reservoir	1C	2B 3A		

r. San Juan County

TABLE

Blanding Reservoir #4	1C	2B 3A		4
Dark Canyon Lake	1C	2B 3A		4
Ken's Lake		2B 3A**		4
Lake Powell (Utah portion)	1C 2A		3B	4
Lloyd's Lake	1C	2B 3A		4
Monticello Lake		2B 3A		4
Recapture Reservoir		2B 3A		4

s. Sanpete County

TABLE

Duck Fork Reservoir		2B 3A		4
Fairview Lakes	1C	2B 3A		4
Ferron Reservoir		2B 3A		4
Lower Gooseberry Reservoir	1C	2B 3A		4
Gunnison Reservoir		2B	3C	4
Island Lake		2B 3A		4
Miller Flat Reservoir		2B 3A		4
Ninemile Reservoir		2B 3A		4
Palisade Reservoir	2A	3A		4
Rolfson Reservoir		2B	3C	4
Twin Lakes		2B 3A		4
Willow Lake		2B 3A		4

t. Sevier County

TABLE

Annabella Reservoir		2B 3A		4
Big Lake		2B 3A		4
Farnsworth Lake		2B 3A		4
Fish Lake		2B 3A		4
Forsythe Reservoir		2B 3A		4
Johnson Valley Reservoir		2B 3A		4
Koosharem Reservoir		2B 3A		4
Lost Creek Reservoir		2B 3A		4
Redmond Lake		2B	3B	4
Rex Reservoir		2B 3A		4
Salina Reservoir		2B 3A		4
Sheep Valley Reservoir		2B 3A		4

u. Summit County

TABLE

Abes Lake		2B 3A		4
Alexander Lake		2B 3A		4
Amethyst Lake		2B 3A		4
Beaver Lake		2B 3A		4
Beaver Meadow Reservoir		2B 3A		4
Big Elk Reservoir		2B 3A		4
Blanchard Lake		2B 3A		4
Bridger Lake		2B 3A		4
China Lake		2B 3A		4
Cliff Lake		2B 3A		4
Clyde Lake		2B 3A		4
Coffin Lake		2B 3A		4
Cuberant Lake		2B 3A		4
East Red Castle Lake		2B 3A		4
Echo Reservoir	1C 2A		3A	4
Fish Lake		2B 3A		4
Fish Reservoir		2B 3A		4
Haystack Reservoir #1		2B 3A		4
Henry's Fork Reservoir		2B 3A		4
Hoop Lake		2B 3A		4
Island Lake		2B 3A		4
Island Reservoir		2B 3A		4
Jesson Lake		2B 3A		4
Kamas Lake		2B 3A		4
Lily Lake		2B 3A		4
Lost Reservoir		2B 3A		4
Lower Red Castle Lake		2B 3A		4
Lyman Lake	2A	3A		4

Marsh Lake		2B	3A	4
Marshall Lake		2B	3A	4
McPheters Lake		2B	3A	4
Meadow Reservoir		2B	3A	4
Meeks Cabin Reservoir		2B	3A	4
Notch Mountain Reservoir		2B	3A	4
Red Castle Lake		2B	3A	4
Rockport Reservoir	1C 2A		3A	4
Ryder Lake		2B	3A	4
Sand Reservoir		2B	3A	4
Scow Lake		2B	3A	4
Smith Moorehouse Reservoir	1C	2B	3A	4
Star Lake		2B	3A	4
Stateline Reservoir		2B	3A	4
Tamarack Lake		2B	3A	4
Trial Lake	1C	2B	3A	4
Upper Lyman Lake		2B	3A	4
Upper Red Castle		2B	3A	4
Wall Lake Reservoir		2B	3A	4
Washington Reservoir		2B	3A	4
Whitney Reservoir		2B	3A	4

v. Tooele County

TABLE

Blue Lake		2B	3B	4
Clear Lake		2B	3B	4
Grantsville Reservoir		2B	3A	4
Horseshoe Lake		2B	3B	4
Kanaka Lake		2B	3B	4
Rush Lake		2B	3B	
Settlement Canyon Reservoir		2B	3A	4
Stansbury Lake		2B	3B	4
Vernon Reservoir		2B	3A	4

w. Uintah County

TABLE

Ashley Twin Lakes (Ashley Creek)	1C	2B	3A	4
Bottle Hollow Reservoir		2B	3A	4
Brough Reservoir		2B	3A	4
Calder Reservoir		2B	3A	4
Crouse Reservoir		2B	3A	4
East Park Reservoir		2B	3A	4
Fish Lake		2B	3A	4
Goose Lake #2		2B	3A	4
Matt Warner Reservoir		2B	3A	4
Oaks Park Reservoir		2B	3A	4
Paradise Park Reservoir		2B	3A	4
Pelican Lake		2B	3B	4
Red Fleet Reservoir	1C 2A		3A	4
Steinaker Reservoir	1C 2A		3A	4
Towave Reservoir		2B	3A	4
Weaver Reservoir		2B	3A	4
Whiterocks Lake		2B	3A	4
Workman Lake		2B	3A	4

x. Utah County

TABLE

Big East Lake		2B	3A		4
Salem Pond	2A		3A		4
Silver Flat Lake Reservoir		2B	3A		4
Tibble Fork Resevoir		2B	3A		4
Utah Lake		2B	3B	3D	4

y. Wasatch County

TABLE

Currant Creek Reservoir	1C	2B	3A	4
Deer Creek Reservoir	1C 2A		3A	4
Jordanelle Reservoir	1C 2A		3A	4
Mill Hollow Reservoir		2B	3A	4
Strawberry Reservoir	1C	2B	3A	4

z. Washington County

TABLE

Baker Dam Reservoir		2B	3A	4
Gunlock Reservoir	1C 2A		3B	4
Ivins Reservoir		2B	3B	4
Kolob Reservoir		2B	3A	4
Lower Enterprise Reservoir		2B	3A	4
Quail Creek Reservoir	1C 2A		3B	4
Sand Hollow Reservoir	1C 2A		3B	4
Upper Enterprise Reservoir		2B	3A	4

aa. Wayne County

TABLE

Blind Lake		2B	3A	4
Cook Lake		2B	3A	4
Donkey Reservoir		2B	3A	4
Fish Creek Reservoir		2B	3A	4
Mill Meadow Reservoir		2B	3A	4
Raft Lake		2B	3A	4

bb. Weber County

TABLE

Causey Reservoir		2B	3A	4
Pineview Reservoir	1C 2A		3A	4

** Denotes site-specific temperature, see Table 2.14.2 Notes

13.13 Unclassified Waters

All waters not specifically classified are presumptively classified: 2B, 3D

R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC, RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source 1C	Recreation and Aesthetics 2A	Recreation and Aesthetics 2B	Agriculture 4
BACTERIOLOGICAL (30-DAY GEOMETRIC MEAN) (NO.)/100 ML) (7)				
E. coli	206	126	206	
MAXIMUM (NO.)/100 ML) (7)				
E. coli	668	409	668	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			
INORGANICS (MAXIMUM MG/L)				
Bromate	0.01			
Boron				0.75
Chlorite	<1.0			
Fluoride (3)	1.4-2.4			
Nitrates as N	10			
Total Dissolved Solids (4)				1200
RADIOLOGICAL (MAXIMUM pCi/L)				
Gross Alpha	15			15
Gross Beta (Combined)	4 mrem/yr	Radium 226, 228		
	5			
Strontium 90	8			
Tritium	20000			
Uranium	30			
ORGANICS (MAXIMUM UG/L)				
Chlorophenoxy Herbicides				
2,4-D	70			
2,4,5-TP	10	Methoxychlor		40
POLLUTION INDICATORS (5)				
BOD (MG/L)		5	5	5
Nitrate as N (MG/L)		4	4	
Total Phosphorus as P (MG/L)(6)		0.05	0.05	

FOOTNOTES:

(1) Reserved

(2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.

(3) Maximum concentration varies according to the daily maximum mean air temperature.

TEMP (C)	MG/L
12.0	2.4
12.1-14.6	2.2
14.7-17.6	2.0
17.7-21.4	1.8
21.5-26.2	1.6
26.3-32.5	1.4

(4) SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Blue Creek and tributaries, Box Elder County, from Bear River Bay, Great Salt Lake to Blue Creek Reservoir:
March through October daily maximum 4,900 mg/l and an average of 3,800 mg/l; November through February daily maximum 6,300 mg/l and an average of 4,700 mg/l. Assessments will be based on TDS concentrations measured at the location of STORET 4960740.

Blue Creek Reservoir and tributaries, Box Elder County, daily maximum 2,100 mg/l;

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to I-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway 10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence with Quitchupah Creek to U10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. Forest Service Boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with Soldier Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Soldier Creek to Carbon Canal Diversion: 1,700 mg/l

Quitchupah Creek from the confluence with Ivie Creek to U-10: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Clear Lake: 3,370 mg/l;

South Fork Spring Creek from confluence with Pelican Pond Slough Stream to US 89 1,450 mg/l (Apr.-Sept.)
1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs.

Measurement of E. coli using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

TABLE 2.14.2
NUMERIC CRITERIA FOR AQUATIC WILDLIFE(8)

Parameter	Aquatic Wildlife 3A	3B	3C	3D	5
PHYSICAL					
Total Dissolved Gases	(1)	(1)			
Minimum Dissolved Oxygen (MG/L) (2)(2a)					
30 Day Average	6.5	5.5	5.0	5.0	
7 Day Average	9.5/5.0	6.0/4.0			
Minimum	8.0/4.0	5.0/3.0	3.0	3.0	
Max. Temperature(C)(3)	20	27	27		
Max. Temperature Change (C)(3)	2	4	4		
pH (Range)(2a)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0	
Turbidity Increase (NTU)	10	10	15	15	
METALS (4) (DISSOLVED, UG/L)(5)					
Aluminum					
4 Day Average (6)	87	87	87	87	
1 Hour Average	750	750	750	750	
Arsenic (Trivalent)					
4 Day Average	150	150	150	150	
1 Hour Average	340	340	340	340	
Cadmium (7)					
4 Day Average	0.25	0.25	0.25	0.25	
1 Hour Average	2.0	2.0	2.0	2.0	
Chromium (Hexavalent)					
4 Day Average	11	11	11	11	
1 Hour Average	16	16	16	16	
Chromium (Trivalent) (7)					
4 Day Average	74	74	74	74	
1 Hour Average	570	570	570	570	
Copper (7)					
4 Day Average	9	9	9	9	
1 Hour Average	13	13	13	13	
Cyanide (Free)					
4 Day Average	5.2	5.2	5.2		
1 Hour Average	22	22	22	22	
Iron (Maximum)	1000	1000	1000	1000	
Lead (7)					
4 Day Average	2.5	2.5	2.5	2.5	
1 Hour Average	65	65	65	65	
Mercury					
4 Day Average	0.012	0.012	0.012	0.012	
Nickel (7)					
4 Day Average	52	52	52	52	
1 Hour Average	468	468	468	468	
Selenium					
4 Day Average	4.6	4.6	4.6	4.6	
1 Hour Average	18.4	18.4	18.4	18.4	
Selenium (14) Gilbert Bay (Class 5A) Great Salt Lake Geometric Mean over Nesting Season (mg/kg dry wt)					12.5
Silver					
1 Hour Average (7)	1.6	1.6	1.6	1.6	
Tributyltin					
4 Day Average	0.072	0.072	0.072	0.072	
1 Hour Average	0.46	0.46	0.46	0.46	
Zinc (7)					
4 Day Average	120	120	120	120	
1 Hour Average	120	120	120	120	
INORGANICS (MG/L) (4)					
Total Ammonia as N (9)					
30 Day Average	(9a)	(9a)	(9a)	(9a)	
1 Hour Average	(9b)	(9b)	(9b)	(9b)	
Chlorine (Total Residual)					
4 Day Average	0.011	0.011	0.011	0.011	
1 Hour Average	0.019	0.019	0.019	0.019	
Hydrogen Sulfide (Undissociated, Max. UG/L)	2.0	2.0	2.0	2.0	
Phenol(Maximum)	0.01	0.01	0.01	0.01	
RADIOLOGICAL	(MAXIMUM pCi/L)				
ORGANICS (UG/L) (4)					
Acrolein					
4 Day Average	3.0	3.0	3.0	3.0	
1 Hour Average	3.0	3.0	3.0	3.0	
Aldrin					
1 Hour Average	1.5	1.5	1.5	1.5	
Chlordane					
4 Day Average	0.0043	0.0043	0.0043	0.0043	
1 Hour Average	1.2	1.2	1.2	1.2	
Chlorpyrifos					
4 Day Average	0.041	0.041	0.041	0.041	
1 Hour Average	0.083	0.083	0.083	0.083	
4,4' -DDT					
4 Day Average	0.0010	0.0010	0.0010	0.0010	
1 Hour Average	0.55	0.55	0.55	0.55	
Diazinon					
4 Day Average	0.17	0.17	0.17	0.17	
1 Hour Average	0.17	0.17	0.17	0.17	
Dieldrin					
4 Day Average	0.056	0.056	0.056	0.056	
1 Hour Average	0.24	0.24	0.24	0.24	
Alpha-Endosulfan					
4 Day Average	0.056	0.056	0.056	0.056	
1 Hour Average	0.11	0.11	0.11	0.11	
beta-Endosulfan					
4 Day Average	0.056	0.056	0.056	0.056	
1 Day Average	0.11	0.11	0.11	0.11	
Endrin					
4 Day Average	0.036	0.036	0.036	0.036	
1 Hour Average	0.086	0.086	0.086	0.086	
Heptachlor					
4 Day Average	0.0038	0.0038	0.0038	0.0038	
1 Hour Average	0.26	0.26	0.26	0.26	
Heptachlor epoxide					
4 Day Average	0.0038	0.0038	0.0038	0.0038	
1 Hour Average	0.26	0.26	0.26	0.26	

Hexachlorocyclohexane (Lindane)				
4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0
Methoxychlor (Maximum)	0.03	0.03	0.03	0.03
Mirex (Maximum)	0.001	0.001	0.001	0.001
Nonylphenol				
4 Day Average	6.6	6.6	6.6	6.6
1 Hour Average	28.0	28.0	28.0	28.0
Parathion				
4 Day Average	0.013	0.013	0.013	0.013
1 Hour Average	0.066	0.066	0.066	0.066
PCB's				
4 Day Average	0.014	0.014	0.014	0.014
Pentachlorophenol (11)				
4 Day Average	15	15	15	15
1 Hour Average	19	19	19	19
Toxaphene				
4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION INDICATORS (10)				
Gross Alpha (pCi/L)	15	15	15	15
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	
Total Phosphorus as P(MG/L) (12)	0.05	0.05		

FOOTNOTES:

(1) Not to exceed 110% of saturation.

(2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.

(2a) These criteria are not applicable to Great Salt Lake impounded wetlands. Surface water in these wetlands shall be protected from changes in pH and dissolved oxygen that create significant adverse impacts to the existing beneficial uses. To ensure protection of uses, the Director shall develop reasonable protocols and guidelines that quantify the physical, chemical, and biological integrity of these waters. These protocols and guidelines will include input from local governments, the regulated community, and the general public. The Director will inform the Water Quality Board of any protocols or guidelines that are developed.

(3) Site Specific Standards for Temperature
Ken's Lake: From June 1st - September 20th, 27 degrees C.

(4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.

(5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by EPA approved laboratory methods for the required detection levels.

(6) The criterion for aluminum will be implemented as follows:

Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion (expressed as total recoverable).

(7) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO3, calculations will assume a hardness of 400 mg/l as CaCO3. See Table 2.14.3 for complete equations for hardness and conversion factors.

(8) Reserved

(9) The following equations are used to calculate Ammonia criteria concentrations:

(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

Fish Early Life Stages are Present:

mg/l as N (Chronic) = $((0.0577/(1+10^{7.688-pH})) + (2.487/(1+10^{pH-7.688}))) * MIN (2.85, 1.45*10^{0.028*(25-T)})$

Fish Early Life Stages are Absent:

mg/l as N (Chronic) = $((0.0577/(1+10^{7.688-pH})) + (2.487/(1+10^{pH-7.688}))) * 1.45*10^{0.028*(25-MAX(T,7))})$

(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average the acute criterion calculated using the following equations.

Class 3A:

mg/l as N (Acute) = $(0.275/(1+10^{7.204-pH})) + (39.0/1+10^{pH-7.204}))$

Class 3B, 3C, 3D:

mg/l as N (Acute) = $0.411/(1+10^{7.204-pH})) + (58.4/(1+10^{pH-7.204}))$

In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion. The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Director, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The Director will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where application of the "Early Life Stages are Absent" criterion is determined to be appropriate.

(10) Investigation should be conducted to develop more information where these levels are exceeded.

(11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

(12) Total Phosphorus as P (mg/l) as a pollution indicator for lakes and reservoirs shall be 0.025.

(13) Reserved

(14) The selenium water quality standard of 12.5 (mg/kg dry weight) for Gilbert Bay is a tissue based standard using the complete egg/embryo of aquatic dependent birds using Gilbert Bay based upon a minimum of five samples over the nesting season. Assessment procedures are incorporated as a part of this standard as follows:

Egg Concentration Triggers: DWQ Responses

Below 5.0 mg/kg: Routine monitoring with sufficient intensity to determine if selenium concentrations within the Great Salt Lake ecosystem are increasing.

5.0 mg/kg: Increased monitoring to address data gaps, loadings, and areas of uncertainty identified from initial Great Salt Lake selenium studies.

6.4 mg/kg: Initiation of a Level II Antidegradation review by the State for all discharge permit renewals or new discharge permits to Great Salt Lake. The Level II Antidegradation review may include an analysis of loading reductions.

9.8 mg/kg: Initiation of preliminary TMDL studies to evaluate selenium loading sources.

12.5 mg/kg and above: Declare impairment. Formalize and implement TMDL.

Antidegradation
Level II Review procedures associated with this standard are referenced at R317-2-3.5.C.

TABLE
1-HOUR AVERAGE (ACUTE) CONCENTRATION OF TOTAL AMMONIA AS N (MG/L)

pH	Class 3A	Class 3B, 3C, 3D
6.5	32.6	48.8
6.6	31.3	46.8
6.7	29.8	44.6
6.8	28.1	42.0
6.9	26.2	39.1
7.0	24.1	36.1
7.1	22.0	32.8
7.2	19.7	29.5
7.3	17.5	26.2
7.4	15.4	23.0
7.5	13.3	19.9
7.6	11.4	17.0
7.7	9.65	14.4
7.8	8.11	12.1
7.9	6.77	10.1
8.0	5.62	8.40
8.1	4.64	6.95

8.2	3.83	5.72
8.3	3.15	4.71
8.4	2.59	3.88
8.5	2.14	3.20
8.6	1.77	2.65
8.7	1.47	2.20
8.8	1.23	1.84
8.9	1.04	1.56
9.0	0.89	1.32

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/l)

Fish Early Life Stages Present
Temperature, C

pH	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.80	2.80	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.90
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.88	0.77
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.97	0.86	0.75	0.66
8.3	1.52	1.52	1.39	1.22	1.07	0.94	0.83	0.73	0.64	0.56
8.4	1.29	1.29	1.17	1.03	0.91	0.80	0.70	0.62	0.54	0.48
8.5	1.09	1.09	0.99	0.87	0.76	0.67	0.59	0.52	0.46	0.40
8.6	0.92	0.92	0.84	0.73	0.65	0.57	0.50	0.44	0.39	0.34
8.7	0.78	0.78	0.71	0.62	0.55	0.48	0.42	0.37	0.33	0.29
8.8	0.66	0.66	0.60	0.53	0.46	0.41	0.36	0.32	0.28	0.24
8.9	0.56	0.56	0.51	0.45	0.40	0.35	0.31	0.27	0.24	0.21
9.0	0.49	0.49	0.44	0.39	0.34	0.30	0.26	0.23	0.20	0.18

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/l)

Fish Early Life Stages Absent
Temperature, C

pH	0-7	8	9	10	11	12	13	14	16
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.36	6.89	6.06
6.6	10.7	10.1	9.37	9.37	8.79	8.24	7.72	7.24	6.36
6.7	10.5	9.99	9.20	8.62	8.08	7.58	7.11	6.66	5.86
6.8	10.2	9.81	8.98	8.42	7.90	7.40	6.94	6.51	5.72
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.56
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.37
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.15
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	4.90
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.61
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.30
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	3.97
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.61
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.25
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	2.89
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.54
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.21
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	1.91
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.63
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.39
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.17
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	0.990
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.836
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.707
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.601
8.9	0.917	0.860	0.806	0.758	0.709	0.664	0.623	0.584	0.513
9.0	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.442

pH	18	20	22	24	26	28	30
6.5	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	4.41	3.78	3.33	2.92	2.57	2.26	1.99
7.3	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	0.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	0.68	1.47	1.29	1.14	1.00	0.879	0.733
8.2	0.43	1.26	1.11	0.073	0.855	0.752	0.661
8.3	0.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	0.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.735	0.646	0.568	0.499	0.439	0.396	0.339
8.7	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.389	0.342	0.300	0.264	0.232	0.204	0.179

TABLE 2.14.3a

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD
WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD
BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	4-Day Average (Chronic) Concentration (UG/L)
CADMIUM	$CF * e^{(0.7409\ (\ln(\text{hardness})) - 4.719}$ CF = 1.101672 - ln(hardness) (0.041838)
CHROMIUM III	$CF * e^{(0.8190(\ln(\text{hardness})) + 0.6848}$ CF = 0.860
COPPER	$CF * e^{(0.8545(\ln(\text{hardness})) - 1.702)}$ CF = 0.960
LEAD	$CF * e^{(1.273(\ln(\text{hardness}))-4.705)}$ CF = 1.46203 - ln(hardness)(0.145712)
NICKEL	$CF * e^{(0.8460(\ln(\text{hardness}))+0.0584)}$ CF = 0.997
SILVER	N/A
ZINC	$Cf * e^{(0.8473(\ln(\text{hardness}))+0.884)}$ CF = 0.986

TABLE 2.14.3b

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD
WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD
BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	1-Hour Average (Acute) Concentration (UG/L)
CADMIUM	$CF * e^{(1.0166(\ln(\text{hardness}))-3.924)}$ CF = 1.136672 - ln(hardness)(0.041838)
CHROMIUM (III)	$CF * e^{(0.8190(\ln(\text{hardness})) +3.7256)}$ CF = 0.316
COPPER	$CF * e^{(0.9422(\ln(\text{hardness}))- 1.700)}$ CF = 0.960
LEAD	$CF * e^{(1.273(\ln(\text{hardness}))-1.460)}$ CF = 1.46203 - ln(hardness)(0.145712)
NICKEL	$CF * e^{(0.8460(\ln(\text{hardness})) +2.255)}$ CF= 0.998
SILVER	$CF * e^{(1.72(\ln(\text{hardness}))- 6.59)}$ CF = 0.85
ZINC	$CF * e^{(0.8473(\ln(\text{hardness})) +0.884)}$ CF = 0.978

FOOTNOTE:
(1) Hardness as mg/l $CaCO_3$.

TABLE 2.14.4
EQUATIONS FOR PENTACHLOROPHENOL
(pH DEPENDENT)

4-Day Average (Chronic) Concentration (UG/L)	1-Hour Average (Acute) Concentration (UG/L)
$e^{(1.005(pH))-5.134}$	$e^{(1.005(pH))-4.869}$

TABLE 2.14.5

SITE SPECIFIC CRITERIA FOR
DISSOLVED OXYGEN FOR JORDAN RIVER, SURPLUS CANAL, AND STATE CANAL
(SEE SECTION 2.13)

DISSOLVED OXYGEN:

May-July	
7-day average	5.5 mg/l
30-day average	5.5 mg/l
Instantaneous minimum	4.5 mg/l
August-April	
30-day average	5.5 mg/l
Instantaneous minimum	4.0 mg/l

TABLE 2.14.6
LIST OF HUMAN HEALTH CRITERIA (CONSUMPTION)

Chemical Parameter	Water and Organism (ug/L) Class 1C	Organism Only (ug/L) Class 3A,3B,3C,3D
Antimony	5.6	640
Arsenic	A	A
Beryllium	C	C
Cadmium	C	C
Chromium III	C	C
Chromium VI	C	C
Copper	1,300	
Lead	C	C
Mercury	A	A
Nickel	100 MCL	4,600
Selenium	A	4,200
Thallium	0.24	0.47
Zinc	7,400	26,000
Cyanide	140	140
Asbestos	7 million Fibers/L	
2,3,7,8-TCDD Dioxin	5.0 E -9 B	5.1 E-9 B
Acrolein	6.0	9.0
Acrylonitrile	0.051 B	0.25 B
Alachlor	2.0	
Atrazine	3.0	
Benzene	2.2 B	51 B
Bromoform	4.3 B	140 B
Carbofuran	40	
Carbon Tetrachloride	0.23 B	1.6 B
Chlorobenzene	100 MCL	1,600
Chlorodibromomethane	0.40 B	13 B
Chloroethane		
2-Chloroethylvinyl Ether		
Chloroform	5.7 B	470 B
Dalapon	200	
Di(2ethylhexl)adipate	400	
Dibromochloropropane	0.2	
Dichlorobromomethane	0.55 B	17 B
1,1-Dichloroethane		
1,2-Dichloroethane	0.38 B	37 B
1,1-Dichloroethylene	7 MCL	7,100
Dichloroethylene (cis-1,2)	70	
Dinoseb	7.0	
Diquat	20	
1,2-Dichloropropane	0.50 B	15 B
1,3-Dichloropropene	0.34	21
Endothall	100	
Ethylbenzene	530	2,100
Ethylene Dibromide	0.05	
Glyphosate	700	
Haloacetic acids	60 E	
Methyl Bromide	47	1,500
Methyl Chloride	F	F
Methylene Chloride	4.6 B	590 B
Ocamyl (vidate)	200	
Picloram	500	
Simazine	4	
Styrene	100	
1,1,2,2-Tetrachloroethane	0.17 B	4.0 B
Tetrachloroethylene	0.69 B	3.3 B
Toluene	1,000	15,000
1,2 -Trans-Dichloroethylene	100 MCL	10,000
1,1,1-Trichloroethane	200 MCL	F
1,1,2-Trichloroethane	0.59 B	16 B
Trichloroethylene	2.5 B	30 B
Vinyl Chloride	0.025	2.4
Xylenes	10,000	
2-Chlorophenol	81	150
2,4-Dichlorophenol	77	290
2,4-Dimethylphenol	380	850
2-Methyl-4,6-Dinitrophenol	13.0	280
2,4-Dinitrophenol	69	5,300
2-Nitrophenol		
4-Nitrophenol		
3-Methyl-4-Chlorophenol		
Penetachlorophenol	0.27 B	3.0 B
Phenol	10,000	860,000
2,4,6-Trichlorophenol	1.4 B	2.4 B
Acenaphthene	670	990
Acenaphthylene		
Anthracene	8,300	40,000
Benzidine	0.000086 B	0.00020 B
BenzoaAnthracene	0.0038 B	0.018 B
BenzoaPyrene	0.0038 B	0.018 B
BenzobFluoranthene	0.0038 B	0.018 B
BenzoghiPerylene		
BenzokFluoranthene	0.0038 B	0.018 B
Bis2-ChloroethoxyMethane		
Bis2-ChloroethylEther	0.030 B	0.53 B
Bis2-Chloroisopropy1Ether	1,400	65,000
Bis2-EthylhexylPhthalate	1.2 B	2.2 B
4-Bromophenyl Phenyl Ether		
Butylbenzyl Phthalate	1,500	1,900
2-Chloronaphthalene	1,000	1,600
4-Chlorophenyl Phenyl Ether		
Chrysene	0.0038 B	0.018 B
Dibenzoa,hAnthracene	0.0038 B	0.018 B
1,2-Dichlorobenzene	420	1,300
1,3-Dichlorobenzene	320	960
1,4-Dichlorobenzene	63	190
3,3-Dichlorobenzidine	0.021 B	0.028 B
Diethyl Phthalate	17,000	44,000
Dimethyl Phthalate	270,000	1,100,000
Di-n-Butyl Phthalate	2,000	4,500
2,4-Dinitrotoluene	0.11 B	3.4 B
2,6-Dinitrotoluene		
Di-n-Octyl Phthalate		
1,2-Diphenylhydrazine	0.036 B	0.20 B
Fluoranthene	130	140
Fluorene	1,100	5,300
Hexachlorobenzene	0.00028 B	0.00029 B
Hexachlorobutedine	0.44 B	18 B
Hexachloroethane	1.4 B	3.3 B
Hexachlorocyclopentadiene	40	1,100
Ideno 1,2,3-cdPyrene	0.0038 B	0.018 B
Isophorone	35 B	960 B
Naphthalene		
Nitrobenzene	17	690
N-Nitrosodimethylamine	0.00069 B	3.0 B
N-Nitrosodi-n-Propylamine	0.005 B	0.51 B
N-Nitrosodiphenylamine	3.3 B	6.0 B
PhenanthrenePyrene	830	4,000
1,2,4-Trichlorobenzene	35	70
Aldrin	0.000049 B	0.000050 B
alpha-BHC	0.0026 B	0.0049 B
beta-BHC	0.0091 B	0.017 B
gamma-BHC (Lindane)	0.2 MCL	1.8
delta-BHC		
Chlordane	0.00080 B	0.00081 B
4,4-DDT	0.00022 B	0.00022 B
4,4-DDE	0.00022 B	0.00022 B
4,4-DDD	0.00031 B	0.00031 B
Dieldrin	0.000052 B	0.000054 B
alpha-Endosulfan	62	89
beta-Endosulfan	62	89
Endosulfan Sulfate	62	89
Endrin	0.059	0.060
Endrin Aldehyde	0.29	0.30
Heptachlor	0.000079 B	0.000079 B
Heptachlor Epoxide	0.000039 B	0.000039 B
Polychlorinated Biphenyls PCB's	0.000064 B,D	0.000064 B,D
Toxaphene	0.00028 B	0.00028 B

Footnotes:

A. See Table 2.14.2

B. Based on carcinogenicity of 10-6 risk.

C. EPA has not calculated a human criterion for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics

D. This standard applies to total PCBs.

KEY: water pollution, water quality standards
November 30, 2015 19-5
Notice of Continuation September 26, 2011 FWPCA, 33 USC 1251, 1311-1317, 1329

R317. Environmental Quality, Water Quality.
R317-8. Utah Pollutant Discharge Elimination System (UPDES).
R317-8-1. General Provisions and Definitions.

1.1 COMPARABILITY WITH THE CWA. The UPDES rules promulgated pursuant to the Utah Water Quality Act are intended to be compatible with the Federal regulations adopted pursuant to CWA.

1.2 CONFLICTING PROVISIONS. The provisions of the UPDES rules are to be construed as being compatible with and complementary to each other. In the event that any of these rules are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

1.3 SEVERABILITY. In the event that any provision of these rules is found to be invalid by a court of competent jurisdiction, the remaining UPDES rules shall not be affected or diminished thereby.

1.4 ADMINISTRATION OF THE UPDES PROGRAM. The Director has responsibility for the administration of the UPDES program, including pretreatment. The responsibility for the program is delegated to the Director in accordance with UCA Subsection 19-5-104(11) and UCA Subsection 19-5-107(2)(a). The Director has the responsibility for issuance, denial, modification, revocation and enforcement of UPDES permits, including general permits, Federal facilities permits, and sludge permits; and approval and enforcement authority for the pretreatment program.

1.5 DEFINITIONS. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(2) "Applicable standards and limitations" means all standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under Subsection 19-5-104(6) of the Utah Water Quality Act and rules promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal.

(3) "Application" means the forms available from the Division, which are the same as the EPA standard NPDES forms, for applying for a UPDES permit, including any additions, revisions or modifications.

(4) "Average monthly discharge limit" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharge measured during a calendar month divided by the number of daily discharges measured during the month.

(5) "Average weekly discharge limit" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

(7) "Class I sludge management facility" means any POTW required to have an approved pretreatment program under R317-8-8 and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(8) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(9) "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. 1251 et seq.).

(10) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(11) "Direct discharge" means the discharge of a pollutant.

(12) "Discharge of a pollutant" means any addition of any pollutants to "waters of the State" from any "point source." This definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

(13) "Economic impact consideration" means the reasonable consideration given by the Director to the economic impact of water pollution control on industry and agriculture; provided, however, that such consideration shall be consistent and in compliance with the CWA and EPA promulgated regulations.

(14) "Discharge Monitoring Report (DMR)" means EPA uniform national form or equivalent State form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees.

(15) "Draft permit" means a document prepared under R317-8-6.3 indicating the Director's preliminary decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as provided in R317-8-5.6 is not a draft permit. A proposed permit prepared after the close of the public comment period is not a draft permit.

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

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

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

(19) "Facility or activity" means any UPDES point source, or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the UPDES program.

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

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

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

(23) "Interstate agency" means an agency of which Utah and one or more states is a member, established by or under an agreement or compact, or any other agency, of which Utah and one or more other states are members, having substantial powers

or duties pertaining to the control of pollutants.

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

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

(26) "Municipality" means a city, town, district, county, or other public body created by or under the State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes. For purposes of these rules, an agency designated by the Governor under Section 208 of the CWA is also considered to be a municipality.

(27) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the CWA.

(28) "New discharger" means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective UPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commenced discharging into waters of the state after August 13, 1979.

(29) "New source" means any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced;

(a) After promulgation of EPA's standards of performance under Section 306 of CWA which are applicable to such source, or

(b) After proposal of Federal standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the Federal standards are promulgated in accordance with Section 306 within 120 days of their proposal.

(30) "Non-continuous or batch discharge" for a discharge to be considered a non-continuous or batch discharge the following must apply:

(a) Frequency of a non-continuous or batch discharge:

i. shall not occur more than once every three (3) weeks,

ii. shall not be more than once during the three (3) weeks and

iii. shall not exceed 24 hours;

(b) Shall not cause a slug load at the POTW.

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

(32) "Permit" means an authorization, license, or equivalent control document issued by the Director to implement the requirements of the UPDES rules. "Permit" includes a UPDES "general permit." The term does not include any document which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

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

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

(35) "Pollutant" means, for the purpose of these rules, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

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

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

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

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

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

(41) "Publicly-owned treatment works" (POTW) means any facility for the treatment of pollutants owned by the State, its political subdivisions, or other public entity. For the purposes of these rules, POTW includes sewers, pipes or other conveyances conveying wastewater to a POTW providing treatment, treatment of pollutants includes recycling and reclamation, and pollutants refers to municipal sewage or industrial wastes of a liquid nature.

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

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

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

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

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

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

(7) consecutive day period.

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

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

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

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

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

(53) "Standards for sewage sludge use or disposal" means the rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

(54) "State/EPA Agreement" means an agreement between the State and the Regional Administrator which coordinates State and EPA activities, responsibilities and programs, including those under the CWA programs.

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

(56) "Toxic pollutant" means any pollutant listed as toxic in R317-8-7.6 or, in the case of sludge use or disposal practices, any pollutant identified as toxic in State adopted rules for the disposal of sewage sludge.

(57) "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

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

(59) "Waters of the State" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish or wildlife, shall not be considered to be "waters of the State." The exception for confined bodies of water does not apply to any waters which meet the definition of "waters of the United States" under 40 CFR 122.2. Waters are considered to be confined to and retained within the limits of private property only if there is no discharge or seepage to either surface water or groundwater. Waters of the State includes "wetlands" as defined in the Federal Clean Water Act.

(60) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

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

(62) "Utah Pollutant Discharge Elimination System (UPDES)" means the State-wide program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under the Utah Water Quality Act.

1.6 DEFINITIONS APPLICABLE TO STORM-WATER DISCHARGES.

(1) "Co-Permittee" means a permittee to a UPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a UPDES permit (other than the UPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) "Incorporated place" means a city or town that is incorporated under the laws of Utah.

(4) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of Census; or

(b) Located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the 1990 Decennial Census by the Bureau of Census, except municipal separate storm sewers that are located in the incorporated places, townships or towns within the County; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) or (b) and that are designated by the Director as part of a large or medium municipal separate storm sewer system. See R317-8-3.9(6)(a) for provisions regarding this definition.

(5) "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) "Major outfall" means a major municipal separate storm sewer outfall.

(7) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of Census;

(b) Located in counties with unincorporated urbanized areas with a population greater than 100,000 but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) and (b) and that are designated by the Director as part of the large or medium municipal separate storm sewer system. See R317-8-3.9(6)(b) for provisions regarding this definition.

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

(9) "Municipal separate storm sewer system" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to paragraphs R317-8-1.6(4), (7), and (14) of this section, or designated under paragraph R317-8-3.9(1)(a)5 of this section.

(10) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

(11) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

(12) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(13) "Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA: any chemical the facility is required to report pursuant to section 313 of Title III of SARA: fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(14) "Small municipal separate storm sewer system" means all separate storm sewers that are:

(a) Owned or operated by the United States, State of Utah, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial waste, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State.

(b) Not defined as "large" or "medium" municipal separate storm sewer system pursuant to paragraphs R317-8-1.6(4) and (7) of this 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 rules, shall have the meaning given below:

(1) "BAT" means best available technology economically achievable;

(2) "BCT" means best conventional pollutant control technology;

(3) "BMPs" means best management practices;

(4) "BOD" means biochemical oxygen demands;

(5) "BPT" means best practicable technology currently available;

(6) "CFR" means Code of Federal Regulations;

(7) "COD" means chemical oxygen demand;

(8) "CWA" means the Federal Clean Water Act;

(9) "DMR" means discharge monitoring report;

(10) "NPDES" means National Pollutant Discharge Elimination System;

(11) "POTW" means publicly owned treatment works;

(12) "SIC" means standard industrial classification;

(13) "TDS" means total dissolved solids;

(14) "TSS" means total suspended solids;

(15) "UPDES" means Utah Pollutant Discharge Elimination System;

(16) "UWQB" means the Utah Water Quality Board;

(17) "WET" means whole effluent toxicity.

1.8 UPGRADE AND RECLASSIFICATION. Upgrading or reclassification of waters of the State by the Utah Water Quality Board may be done periodically, but only using procedures and in a manner consistent with the requirements of State and Federal law.

1.9 PUBLIC PARTICIPATION. The Division will investigate and provide written response to all citizen complaints. In addition, the Director shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Director will publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

1.10 INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE. The State adopts the following Federal standards and procedures, effective as of December 8, 1999 unless otherwise noted, which are incorporated by reference:

(1) 40 CFR 129 (Toxic Effluent Standards) with the following exceptions:

(a) Substitute "UPDES" for all federal regulation references to "NPDES".

(b) Substitute Director of the Division of Water Quality for all federal regulation references to "State Director".

(c) Substitute "R317-8-4.4, R317-8-6, and R317-8-7" for all federal regulation references to "40 CFR Parts 124 and 125".

(2) 40 CFR 133 (Secondary Treatment Regulation) with the following exceptions:

(a) 40 CFR 133.102 for which R317-1-3.2 is substituted.

(b) 40 CFR 133.105.

(c) Substitute "UPDES" or "Utah Pollutant Discharge Elimination System" for all federal regulation references for "NPDES" or "National Pollutant Discharge Elimination System", respectively.

(d) Substitute Director of the Division of Water Quality for all federal regulation references to "State Director" in 40 CFR 133.103.

(3) 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants)

(4) 40 CFR 403.6 (National Pretreatment Standards and Categorical Standards), effective as of May 16, 2008, with the following exception:

(a) Substitute Director of the Division of Water Quality for all federal regulation references to "Director".

(5) 40 CFR 403.7, effective as of May 16, 2008, (Removal

Credits)

(6) 40 CFR 403.13, effective as of May 16, 2008, (Variances from Categorical Pretreatment Standards for Fundamentally Different Factors)

(7) 40 CFR Parts 405 through 411

(8) 40 CFR Part 412, effective as of July 30, 2012, with the following changes:

(a) Substitute Director of the Division of Water Quality for all federal regulation references to "Director".

(b) Substitute "UPDES" for all federal regulation references to "NPDES".

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

(9) 40 CFR Parts 413 through 471

(10) 40 CFR 503 (Standards for the Use or Disposal of Sewage Sludge), effective as of the date that responsibility for implementation of the federal Sludge Management Program is delegated to the State except as provided in R317-1-6.4, with the following changes:

(a) Substitute Director of the Division of Water Quality for all federal regulation references to "Director".

(11) 40 CFR 122.30

(12) 40 CFR 122.32

(a) In 122.32(a)(2), replace the reference 122.26(f) with R317-8-3.9(5).

(13) 40 CFR 122.33

(a) In 122.33(b)(2)(i), replace the reference 122.21(f) with R317-8-3.1(6).

(b) In 122.33(b)(2)(i), replace the reference 122.21(f)(7) with R317-8-3.1(6)(g).

(c) In 122.33(b)(2)(ii), replace the reference 122.26(d)(1) and (2) with R317-8-3.9(3)(a) and (b)

(d) In 122.33(b)(3), replace the reference 122.26 with R317-8.

(e) In 122.33(b)(3), replace the reference 122.26(d)(1)(iii) and (iv); and (d)(2)(iv) with R317-8-3.9(3)(a)3 and 4; and (3)(b)4.

(14) 40 CFR 122.34

(a) In 122.34(a), replace the reference 122.26(d) with R317-8-3.9(3).

(b) In 122.34(b)(3)(i), replace the reference 122.26(d)(2) with R317-8-3.9(3)(b).

(c) In 122.34(b)(4)(i), replace the reference 122.26(b)(15)(i) with R317-8-3.9(6)(e)1.

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

(e) In 122.34(g)(2), replace the reference 122.7 with R317-8-3.3.

(15) 40 CFR 122.35

(a) In 122.35, replace the reference 122 with R317-8.

(16) 40 CFR 122.36

(17) For the references R317-8-1.10(12), (13), (14), (15), and (16), make the following substitutions:

(a) Substitute the Director of the Division of Water Quality for the "NPDES permitting authority"

(b) Substitute "UPDES" for "NPDES"

(18) 40 CFR 122.21(i), 40 CFR 122.23(a), 40 CFR 122.23(b)(3), 40 CFR 122.23(b)(5), 40 CFR 122.23(b)(7), 40 CFR 122.23(b)(8), 40 CFR 122.23(c), 40 CFR 122.23(d)(2), 40 CFR 122.23(e), 40 CFR 122.23(h), 40 CFR 122.28(b)(2), 40 CFR 122.42(e), 40 CFR 122.62(a)(17), and 40 CFR 122.63(h), with the following substitutions:

(a) Substitute "Director of the Division of Water Quality" for all federal regulation references to "Director" or "State Director".

(b) Substitute "UPDES" for all federal regulation references to "NPDES".

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

R317-8-2. Scope and Applicability.

2.1 APPLICABILITY OF THE UPDES REQUIREMENTS. The UPDES program requires permits for the discharge of pollutants from any point source into waters of the State. The program also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a UPDES permit in accordance with R317-8-8. Prior to promulgation of State rules for sewage sludge use and disposal, the Director shall impose interim conditions in permits issued for publicly owned treatment works or take such other measures as the Director deems appropriate to protect public health and the environment from any adverse affects which may occur from toxic pollutants in sewage sludge.

(1) Specific inclusions. The following are examples of specific categories of point sources requiring UPDES permits for discharges. These terms are further defined in R317-8-3.5 through R317-8-10.9:

(a) Concentrated animal feeding operations;

(b) Concentrated aquatic animal production facilities;

(c) Discharges into aquaculture projects;

(d) Storm water discharges;

(e) Silvicultural point sources; and

(f) Pesticide discharges.

(2) Specific exclusions. The following discharges do not require UPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to storage facility or a seafood processing facility, or when secured in waters of the state for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the State which are regulated under Section 404 of CWA.

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the State are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, but not discharges from concentrated animal feeding operations as defined in R317-8-10, discharges from concentrated aquatic animal production facilities as defined in R317-8-3.7, discharges to aquaculture projects as defined in R317-8-3.8, and discharges from silvicultural point sources as defined in R317-8-3.10.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Director may otherwise require under R317-8-

4.2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, and which are issued under the state's Underground Injection Control program; and underground injections and disposal wells which are permitted by the Director pursuant to Part VII of the Utah Wastewater Disposal Regulations or the Board of Oil, Gas and Mining, Class II.

(i) Discharges which are not regulated by the U.S. EPA under Section 402 of the Clean Water Act.

(3) Requirements for permits on a case-by-case basis.

(a) Various sections of R317-8 allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, separate storm sewers and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Director decides that an individual permit is required as specified in R317-8-2.1(3)(a), the Director shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit within 60 days of receipt of notice, unless permission for a later date is granted by the Director. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent adjudicative proceeding.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Director may require the discharger to submit a permit application or other information regarding the discharge. In requiring such information, the Director shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the Director. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent adjudicative proceeding.

2.2 PROHIBITIONS. No permit may be issued by the Director:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of the Utah Water Quality Act, as amended, or rules promulgated pursuant thereto;

(2) When the Regional Administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR 123.44;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Utah and all affected states;

(4) When, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of CWA.

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Utah water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the UPDES rules and for which the Director has performed a wasteload allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining wasteload allocations to allow for the discharge; and

(b) The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with Utah Water Quality Standards. (See R317-2.)

2.3 VARIANCE REQUESTS BY NON-POTW'S. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the time period specified in this section:

(1) Fundamentally different factors.

(a) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

1. For a request for a variance from best practicable control technology currently available (BPT) by the close of the public comment period under R317-8-6.5.

2. For a request for a variance from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT) by no later than:

a. July 3, 1989, for a request on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations: or

b. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

3. Requests should be filed with the Director. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(b) The request shall explain how the requirements of the applicable regulatory and statutory criteria have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided, however, that 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Director to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant listed by the Administrator under Section 301((g)(4) of the CWA) must be filed as follows:

(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

1. Filing an initial request with the Director stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and the nature of the modification being requested. This request must have been filed not later than:

a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977: or

b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977: and

2. Submitting a completed request no later than the close of the public comment period under R317-8-6.5 demonstrating that the requirements of R317-8-6.8 and the applicable requirements of R317-8-8.8 have been met. Notwithstanding this provision, the complete application for a request shall be filed 180 days before the Director must make a decision (unless the Director establishes a shorter or longer period). For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with R317-8-2.3(2)(a)(2) and need not be preceded by an initial

request under R317-8-2.3(2)(a)(2).

3. Requests should be filed with the Director. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(3) Delay in construction of POTW. An extension of the Federal statutory deadlines based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under R317-8-2.7, whichever is later, but in no event may this date have been later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) Innovative technology. An extension from the Federal statutory deadline for best available technology, or for best conventional pollutant control technology, based on the use of innovative technology may be requested no later than the close of the public comment period under Section R317-8-6.5 for the discharger's initial permit requiring compliance with best available technology or best conventional pollutant control technology. The request shall demonstrate that the requirements of Section R317-8-6.8 and 8-5.6 have been met.

(5) Thermal discharges. A variance for the thermal component of any discharge must be filed with a timely application for a permit under R317-8-3 except that if thermal effluent limitations are established by EPA or are based on water quality standards the request for a variance may be filed by the close of the public comment period under R317-8-6.5.

(6) Water Quality Related Effluent Limitations. A modification of requirements for achieving water quality-related effluent limitations may be requested no later than the close of the public comment period under R317-8-6.5 on the permit from which the modification is sought.

2.4 EXPEDITED VARIANCE PROCEDURES AND TIME EXTENSIONS. Notwithstanding the time requirements in R317-8-2.3, the Director may notify a permit applicant before a draft permit is issued under R317-8-6.3 that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the Director may require that the applicant, as a condition of consideration of any potential variance request, submit a request explaining how the requirements of R317-8-7 applicable to the variance have been met. The Director may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under R317-8-2.3(2) may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions will be no more than six months in duration.

2.5 GENERAL PERMITS

(1) Coverage. The Director may issue a general permit in accordance with the following:

(a) Area. The general permit will be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under Sections 208 and 303 of CWA;

2. City, county, or state political boundaries;

3. State highway systems;

4. Standard metropolitan statistical areas as defined by the U.S. Office of Management and Budget;

5. Urbanized areas as designated by the U.S. Bureau of the Census, consistent with the U.S. Office of Management and Budget;

6. Any other appropriate division or combination of boundaries as determined by the Director.

(b) Sources. The general permit will be written to regulate, within the area described in R317-8-2.5(a), either;

1. Storm water point sources; or

2. A category of point sources other than storm water point sources, or a category of treatment works, treating domestic sewage, if the sources or treatment works treating domestic sewage all:

a. Involve the same or substantially similar types of operations;

b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices.

c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;

d. Require the same or similar monitoring; and

e. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-6.

(b) Authorization to discharge, or authorization to engage in sludge use and disposal practices.

1. Except as provided in paragraphs (2)(b)5. and (2)(b)6. of this section, discharges (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (2)(b)5. of this section, contains a provision that a notice of intent is not required or the Director notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (2)(b)6. of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of R-317-8-3.

2. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility of discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfill occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in R317-8-10, including a topographic map. All notices of intent shall be signed in accordance with R317-8-3.3.

3. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;

4. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use for disposal practice), in accordance with the permit either upon receipt of the notice of intent by the Director, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Director.

Coverage may be terminated or revoked in accordance with paragraph (2)(c) of this section.

5. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate. In making such a finding, the Director shall consider: the type of discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

6. The Director may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph R317-8-2.5(2)(c).

(c) Requiring an individual permit.

1. The Director may require any person authorized by a general permit to apply for and obtain an individual UPDES permit. Any interested person may petition the Director to take action under R317-8-2.4. Cases where an individual UPDES permit may be required include the following:

a. The discharge(s) is a significant contributor of pollutants. In making this determination, the Director may consider the following factors:

i. The location of the discharge with respect to waters of the State;

ii. The size of the discharge;

iii. The quantity and nature of the pollutants discharged to waters of the State; and

iv. Other relevant factors;

b. The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general UPDES permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

d. Effluent limitation guidelines are promulgated for point sources covered by the general UPDES permit;

e. A Utah Water Quality Management Plan containing requirements applicable to such point sources is approved;

f. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practices covered by the general UPDES permit; or

2. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under R317-8-3.1 to the Director with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the Director in accordance with R317-8-6.5. If the reasons cited by the owner or operator are adequate to support the request, the Director may issue an individual permit.

3. When an individual UPDES permit is issued to an owner or operator otherwise subject to a general UPDES permit, the applicability of the general permit to the individual UPDES permittee is automatically terminated on the effective date of the individual permit.

4. A source excluded from a general permit solely because he already has an individual permit may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

2.6 DISPOSAL OF POLLUTANTS INTO WELLS, INTO POTWS OR BY LAND APPLICATION.

(1) The Director may issue UPDES permits to control the disposal of pollutants into wells when necessary to protect the public health and welfare, and to prevent the pollution of ground and surface waters.

(2) When part of a discharger's process wastewater is not being discharged into waters of the State (including groundwater) because it is disposed of into a well, into a POTW, or by land application, thereby reducing the flow or level of pollutants being discharged into waters of the State, applicable effluent standards and limitations for the discharge in a UPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the State and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in R317-8-2.6(2)(a), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater to be treated and discharged into waters of the State and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under R317-8-7.3 to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

This method may be algebraically expressed as: $P = E \times N/T$

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the State and T is the total wastewater flow.

(3) R317-8-2.6(2) shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) R317-8-2.6(2) does not alter a dischargers obligation to meet any more stringent requirements established under R317-8-4.

2.7 VARIANCE REQUESTS BY POTWS. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under the following provision:

(1) Water Quality Based Effluent Limitation. A permit modification of the requirements for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under R317-8-6.5 on the permit for which the modification is sought.

(2) Delay in construction. An extension of a Federal statutory deadline based on delay in the construction of the POTW must have been requested on or before August 3, 1987.

2.8 DECISION ON VARIANCES

(1) The Director may deny or forward to the Administrator (or his delegate) with a written concurrence, a completed request for:

(a) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(b) After consultation with the Regional Administrator,

extensions based on the use of innovative technology; or

(c) Variances under R317-8-2.3(4) for thermal pollution.

(2) The Director may deny or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(a) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(b) A variance based on the economic capability of the applicant;

(c) A variance based upon certain water quality factors (See CWA section 301(g)); or

(d) A variance based on water quality related effluent limitations.

(e) Except for information required by R317-8-3.1(4)(c) which shall be retained for a period of at least five years from the date the application is signed, applicants shall keep records of all data used to complete permit applications and any supplemental information for a period of at least three years from the date the application is signed.

R317-8-3. Application Requirements.

3.1 APPLYING FOR A UPDES PERMIT

(1) Application requirements

(a) Any person who is required to have a permit, including new applicants and permittees with expiring permits shall complete, sign, and submit an application to the Director as described in this rule and R317-8-2 Scope and Applicability. On the date of UPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a UPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR 122.6. For the purpose of this section the Director will accept the information required under R317-8-3.5 for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(b) Any person who (1) discharges or proposes to discharge pollutants and (2) owns or operates a sludge-only facility and does not have an effective permit, shall submit a complete application to the Director in accordance with this section and R317-8-6. A complete application shall include a BMP program, if necessary, under R317-8-4.2(10). The following are exceptions to the application requirements:

1. Persons covered by general permits under R317-8-4.2(10);

2. Discharges excluded under R317-8-2.1(2);

3. Users of a privately owned treatment works unless the Director requires otherwise under R317-8-4.2(12).

(2) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under 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 Director. The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that:

1. The Director may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date; and

2. The Director may grant permission to submit the information required by R317-8-3.5(7), (9) and (10) after the permit expiration date.

(c) All applicants for permits, other than POTWs, new sources, and sludge-only facilities must complete EPA Forms 1 and either 2B or 2C or 2F or equivalent State forms as directed by the Director to apply under R317-8-3. Forms may be obtained from the Director. In addition to any other applicable requirements in this section, all POTWs and other treatment works treating domestic sewage, including sludge-only facilities, must submit with their applications the information listed at 40 CFR 501.15(a)(2) within the time frames established in R317-8-3.1(7)(a) and (b).

(d) Continuation of expiring permits. The conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

2. The Director, through no fault of the permittee, does not issue a new permit with an effective date under R317-8-6.11 on or before the expiration date of the previous permit.

3. Effect Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

4. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Director may choose to do any or all of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under R317-8-6.3(2);

c. Issue a new permit under R317-8-6 with appropriate conditions; or

d. Take other actions authorized by the UPDES rules.

(5) Completeness. The Director will not issue a UPDES permit before receiving a complete application for a permit except for UPDES General Permits. A permit application is complete when the Director receives an application form with any supplemental information which is completed to his or her satisfaction.

(6) Information requirements. All applicants for UPDES permits shall provide the following information to the Director, using the application form provided by the Director.

(a) The activities being conducted which require the applicant to obtain UPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) From one (1) to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The operators name, address, telephone number, ownership status, and status as to Federal, State, private, public, or other entity.

(e) Whether the facility is located on Indian lands.

(f) A listing of all other relevant environmental permits, or construction approvals issued by the Director or other state or federal permits.

(g) A topographic map, or other map if a topographic map

is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(h) A brief description of the nature of the business.

(i) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to new source rules promulgated by the Director.

(7) Permits Under Section 19-5-107 of the Utah Water Quality Act.

(a) POTWs with currently effective UPDES permits shall submit the application information required by R317-8-3.1(4)(c) with the next application submitted in accordance with R317-8-3.1(4) of this section or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to the POTW's sludge use or disposal practice(s), whichever occurs first.

(b) Any other existing treatment works treating domestic sewage not covered in R317-8-3.1(7)(a) shall submit an application to the Director within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practice(s) or upon request of the Director prior to the promulgation of an applicable standard for sewage sludge use or disposal if the Director determines that a permit is necessary to protect to public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(c) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

(8) Recordkeeping. Except for information required by R317-8-3.1(7)(c) which shall be retained for a period of at least five years from the date the application is signed or longer as required by the Director, applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this rule for a period of at least three (3) years from the date the application is signed.

(9) Service of process. Every applicant and permittee shall provide the Director an address for receipt of any legal paper for service of process. The last address provided to the Director pursuant to this provision shall be the address at which the Director may tender any legal notice, including but not limited to service of process in connection with any enforcement action. Service, whether by bond or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

(10) Application Forms. The State will use EPA-developed NPDES application forms or State equivalents in administering the UPDES program.

3.2 APPLICATION REQUIREMENTS FOR NEW SOURCES AND NEW DISCHARGES. New manufacturing, commercial, mining and silvicultural dischargers applying for UPDES permits (except for new discharges of facilities subject to the requirements of 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 Director, using application forms provided by the Director:

(1) Expected outfall location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) Discharge dates. The expected date of commencement of discharge.

(3) Flows, Sources of Pollution and Treatment Technologies

(a) Expected treatment of wastewater. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged.

(b) Line drawing. A line drawing of the water flow through the facility with a water balance as described in 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 Director may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

1. Biochemical Oxygen Demand (BOD).
2. Chemical Oxygen Demand (COD).
3. Total Organic Carbon (TOC).
4. Total Suspended Solids (TSS).
5. Flow.
6. Ammonia (as N).
7. Temperature (winter and summer).
8. pH.

(b) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV, R317-8-3.12(4) (certain conventional and nonconventional pollutants).

(c) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

1. The pollutants listed in Table III, R317-8-3.12(3) (the toxic metals, in the discharge from any outfall: Total cyanide, and total phenols);

2. The organic toxic pollutants in R317-8-3.12(2) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected

average production of less than 100,000 tons of coal per year.

(d) The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

1. 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

2. 2-(2,4,5-trichlorophenoxy) propanic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

3. 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);)

4. 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

5. 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

6. Hexachlorophene (HCP) (CAS #70-80-4);

(e) Each applicant must report any pollutants listed in Table V, R317-8-3.12(5) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(f) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of NPDES application Form 2c (see R317-8-3.5). However, the applicant need not complete those portions of Item V requiring tests which he has already performed and reported under the discharge monitoring requirements of his UPDES permit.

(6) Engineering Report. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge.

(7) Other information. Any optional information the permittee wishes to have considered.

(8) Certification. Signature of certifying official under R317-8-3.4.

3.3 CONFIDENTIALITY OF INFORMATION

(1) Any information submitted to the Director pursuant to the UPDES rules may be claimed as confidential by the person submitting the information. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice. If a claim is asserted, it will be treated according to the standards of 40 CFR Part 2.

(2) Information which includes effluent data and records required by UPDES application forms provided by the Director under R317-8-3.1 may not be claimed as confidential.

(3) Information contained in UPDES permits may not be claimed as confidential.

3.4 SIGNATORIES TO PERMIT APPLICATIONS AND REPORTS

(1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) Reports. All reports required by permits and other information requested by the Director under 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 Director.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(5) Discharge Monitoring Reports and related information may be signed and submitted electronically to the EPA's NetDMR program, if a Subscriber Agreement is in place. See Utah Admin. Code R317-1-9.

3.5 APPLICATION REQUIREMENTS FOR EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL DISCHARGERS

Existing manufacturing, commercial, mining, and silvicultural dischargers applying for UPDES permits shall provide the following information to the Director, using application forms provided by the Director:

(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water.

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under 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 Director may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (c) and (d) of this subsection that an applicant shall provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine,, oil and grease, and or E. coli. For all other pollutants, twenty-four (24)-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under R317-8-3.9(3) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Director). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in R317-8-3.9(2)(a). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in R317-8-3.9 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, or E. coli, and fecal streptococcus. The Director may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rainfall), protocols for collecting samples under 40 CFR 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.

(a) Every applicant shall report quantitative data for every outfall for the following pollutants:

1. Biochemical Oxygen Demand (BOD)
2. Chemical Oxygen Demand
3. Total Organic Carbon
4. Total Suspended Solids
5. Ammonia (as N)
6. Temperature (both winter and summer)
7. pH

(b) The Director may waive the reporting requirements for one or more of the pollutants listed in 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 rule, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table 1 of R317-8-3.12 for the applicant's industrial category or categories unless the applicant qualifies as a small business under R317-8-3.5(8). Table II of R317-8-3.12 of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

2. The pollutants listed in Table III of R317-8-3.12 (the toxic metals, cyanide, and total phenols).

(d) 1. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of R317-8-3.12 (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant

or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of R317-8-3.12 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (b) of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2.4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2.4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentration less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under R317-8-3.5(8) is not required to analyze for pollutants listed in Table II of R317-8-3.12 (the organic toxic pollutants).

(e) Each applicant shall indicate whether it knows or has reason to believe that any of the pollutants in R317-8-3.12(5) of this rule, certain hazardous substances and asbestos are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data for the pollutant.

(f) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin(TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2.4.5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) Small business exemption. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in R317-8-3.5(7)(c) and (d) to submit quantitative data for the pollutants listed in R317-8-3.12(2), organic toxic pollutants:

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than $100,000 per year, in second quarter 1980 dollars.

(9) Used or manufactured toxics. The application shall include a listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Director may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue the permit.

(10) Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(11) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by R317-8-3.5(7), the identity of each laboratory or firm and the analyses performed shall be included in the application.

(12) Additional information. In addition to the information reported on the application form, applicants shall provide to the Director, upon request, other information as the Director may reasonably be required to assess the discharges of the facility and to determine whether to issue a UPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

3.6 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) Refer to R317-8-10 for concentrated animal feeding operation permit application requirements.

3.7 CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES

(1) Permit required. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in R317-8-3.7(5) or which the Director designates under R317-8-3.7(3).

(3) Case-by-Case designation of concentrated aquatic animal production facilities.

(a) The Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Director will consider the following factors:

1. The location and quality of the receiving waters of the State;

2. The holding, feeding, and production capacities of the facility;

3. The quantity and nature of the pollutants reaching waters of the State; and

4. Other relevant factors.

(b) A permit application will not be required from a concentrated aquatic animal production facility designated under this section until the Director or authorized representative has conducted an on-site inspection of the facility and has determined that the facility could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated aquatic animal production facilities shall provide the following information to the Director using the application form provided:

(a) The maximum daily and average monthly flow from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the source of intake water.

(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of food fed during that month.

(5) Criteria for determining a concentrated aquatic animal production facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this rule if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water aquatic animals. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar

month of maximum feeding.

3. Cold water aquatic animals include, but are not limited to the Salmonidae family of fish.

(b) Warm water aquatic animals. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

1. Closed ponds which discharge only during periods of excess runoff; or

2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000) pounds) of aquatic animals per year.

3. "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrachidae and Cyprinidae families of fish.

3.8 AQUACULTURE PROJECTS

(1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the UPDES permit program.

(2) Definitions.

(a) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(b) "Designated project areas" means the portions of the waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

3.9 STORM WATER DISCHARGES

(1) Permit requirement.

(a) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:

1. A discharge with respect to which a permit has been issued prior to February 4, 1987;

2. A discharge associated with industrial activity;

3. A discharge from a large municipal separate storm sewer system;

4. A discharge from a medium municipal separate storm sewer system;

5. A discharge which the Director determines contributes to a violation of water quality standard or is a significant contributor of pollutants to waters of the State. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under this section or agricultural storm water runoff which is exempted from the definition of point source. The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

a. The location of the discharge with respect to waters of the State;

b. The size of the discharge;

c. The quantity and nature of the pollutants discharged to waters of the State; and

d. Other relevant factors.

(b) The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, by product, or waste products located on the site of such operations.

(c) Large and medium municipal separate storm sewer systems.

1. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

2. The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or individual discharges from municipal separate storm sewers within the system.

3. The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

a. Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

b. Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

4. A regional authority may be responsible for submitting a permit application under the following guidelines:

i. The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due;

ii. The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

iii. Each of the operators of municipal separate storm sewers within the systems described in R317-8-1.6(4)(a),(b) and (c) or R317-8-1.6(7)(a),(b), and (c), that are under the purview of the designated regional authority, shall comply with the application requirements of R317-8-3.9(3).

5. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Director may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

6. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

7. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(d) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of R317-8-3.9(2), an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May

15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing UPDES permit number.

(e) Other municipal separate storm sewers. The Director may issue permits for municipal separate storm sewers that are designated under R317-8-3.9(1)(a)(5) on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(f) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Director, in his discretion, may issue: a single UPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the State; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

1. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the State, with each discharger to the non-municipal conveyance a co-permittee to that permit.

2. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

3. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(g) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain UPDES permits and that are not subject to the provisions of this section.

(h) Small municipal, small construction, TMDL pollutants of concern, and significant contributors of pollution.

1. On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (1)(a) of this section to obtain a permit, operators shall be required to obtain a UPDES permit only if:

a. The discharge is from a small MS4 required to be regulated pursuant to 40 CFR 122.32 (see R317-8-1.10(10)).

b. The discharge is a storm water discharge associated with small construction activity pursuant to paragraph R317-8-3.9(6)(e).

c. The Director or authorized representative determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

d. The Director or authorized representative determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

2. Operators of small MS4s designated pursuant to paragraphs (1)(h)1.a., (1)(h)1.c., and (1)(h)1.d. of this section shall seek coverage under an UPDES permit in accordance with 40 CFR 122.33, 122.34, and 122.35 (see R317-8-1.10(11) through R317-8-1.10(13). Operators of non-municipal sources designated pursuant to paragraph (1)(h)1.b; (1)(h)1.c; and (1)(h)1.d of this section shall seek coverage under a UPDES permit in accordance with paragraph (2)(a) of this section.

3. Operators of storm water discharges designated pursuant to paragraphs (1)(h)1.c. and (1)(h)1.d. of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Director (see R317-8-3.6(3)).

(2) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.

(a) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Director is evaluating under R317-8-3.9(1)(a)5 and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph R317-8-3.9(2)(b) of this section, shall submit an UPDES application in accordance with R317-8-3.1 and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Forms 1 and 2F. Applicants for discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2C, and 2F. Applicants for new sources or new discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2D, and 2F.

1. Except as provided in R317-8-3.9(2)(a)2, 3, and 4, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

a. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall; each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

b. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

c. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a UPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

d. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

e. Quantitative data based on samples collected during storm events and collected in accordance with R317-8-3.1 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

i. Any pollutant limited in an effluent guideline to which the facility is subject;

ii. Any pollutant listed in the facility's UPDES permit for its process wastewater (if the facility is operating under an existing UPDES permit);

iii. Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

iv. Any information on the discharge required under R317-8-3.5(7)(d) and (e);

v. Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

vi. The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 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 Director may reasonably require to determine whether to issue a permit and may require any facility subject to R317-8-3.9(2)(a)2 to comply with R317-8-3.9(2)(a)1.

(3) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under R317-8-3.9(1)(a)5, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under R317-8-3.9(1)(a)5 shall include:

(a) Part 1. Part 1 of the application shall consist of:

1. General information. The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

2. Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in R317-8-3.9(3)(b)1, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

3. Source identification.

a. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

b. A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

i. The location of known municipal storm sewer system outfalls discharging to waters of the State;

ii. A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agriculture and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, 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 Director (based on information received in part 1 of the application, the Director shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Director shall designate all outfalls) developed as follows:

i. For each outfall or field screening point designated, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with R317-8-3.5(7) (the Director may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

ii. A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

iii. For samples collected and described under R317-8-3.9(3)(b)3.a i and ii, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (other toxic pollutants metals, cyanide, and total phenols) of R317-8-3.13, and for the following pollutants:

Total suspended solids (TSS)
Total dissolved solids (TDS)
COD
BOD5
Oil and grease
Fecal coliform
Fecal streptococcus
pH
Total Kjeldahl nitrogen
Nitrate plus nitrite
Dissolved phosphorus
Total ammonia plus organic nitrogen
Total phosphorus

iv. Additional limited quantitative data required by the Director for determining permit conditions (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation and other parameters necessary to insure representativeness);

b. Estimates of the annual pollutant load of the cumulative discharges to waters of the State from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the State from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

c. A proposed schedule to provide estimates for each major outfall identified in either R317-8-3.9(3)(b)2 or R317-8-3.9(3)(a)3b 1 of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under R317-8-3.9(3)(b)3a of this section; and

d. A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

4. Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the

maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

a. A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

i. A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

ii. A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in R317-8-3.9(3)(b)4d;

iii. A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

iv. A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

v. A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under R317-8-3.9(3)(b)4c); and

vi. A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

b. A description of a program, including a schedule, to detect and remove illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

i. A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the State);

ii. A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

iii. A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

iv. A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

v. A description of a program to promote, publicize and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

vi. A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

vii. A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

c. A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

i. Identify priorities and procedures for inspection and establishing and implementing control measures for such discharges;

ii. Describe a monitoring program for storm water discharges associated with the industrial facilities identified in R317-8-3.9(b)4c to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing UPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under R317-8-3.5(7)(d) 1, 2, and (e).

d. A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

i. A description of procedures for site planning which

incorporate consideration of potential water quality impacts;

ii. A description of requirements for nonstructural and structural best management practices;

iii. A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

iv. A description of appropriate educational and training measures for construction site operators.

v. Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

vi. Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under R317-8-3.9(8)(b) 3 and 4. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

vii. Where more than one legal entity submits an application, the application shall contain a description of the rules and responsibilities of each legal entity and procedures to ensure effective coordination.

viii. Where requirements under R317-8-3.9(3)(a)4e, 3.9(3)(b)3b, and 3.9(3)(b)4 are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under R317-8-3.9(1)(a)5, R317-8-1.6(4)(b) or R317-8-1.6(7)(b) from such requirements. The Director shall not exclude the operator of a discharge from a municipal separate storm sewer located in incorporated places with populations greater than 100,000 and less than 250,000 according to the latest decennial census by Bureau of Census; or located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the latest decennial census by the Bureau of Census, from any of the permit application requirements except where authorized.

(4) Application deadlines. Any operator of a point source required to obtain a permit under R317-8-3.9(1)(a) that does not have an effective UPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(a) Storm water discharges associated with industrial activities.

1. Except as provided in paragraph (4)(a)2. Of this section, for any storm water discharge associated with industrial activity identified in paragraphs R317-8-3.9(6)(d)1 through 11 of this section that is not authorized by a storm water general permit, a permit application made pursuant to paragraph R317-8-3.9(2) of this section must be submitted to the Executive Secretary by October 1, 1992;

2. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, the permit application must be submitted to the Executive Secretary by March 10, 2003.

(b) For any discharge from a large municipal separate storm sewer system:

1. Part 1 of the application shall be submitted to the Director by November 18, 1991;

2. Based on information received in the part 1 application the Director will approve or deny a sampling plan within 90 days after receiving the part 1 application;

3. Part 2 of the application shall be submitted to the Director by November 16, 1992.

(c) For any discharge from a medium municipal separate storm sewer system;

1. Part 1 of the application shall be submitted to the Director by May 18, 1992.

2. Based on information received in the part 1 application the Director will approve or deny a sampling plan within 90 days after receiving the part 1 application.

3. Part 2 of the application shall be submitted to the Director by May 17, 1993.

(d) A permit application shall be submitted to the Executive Secretary within 180 days of notice, unless permission for a later date is granted by the Director for;

1. A storm water discharge which the Director determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

2. A storm water discharge subject to R317-8-3.9(2)(a)5.

(e) Facilities with existing UPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth in R317-8-3.9(4)(a).

(f) For any storm water discharge associated with small construction activity identified in paragraph R317-8-3.9(6)(e)1. of this section, see R317-8-3.1(2). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(g) For any discharge from a regulated small MS4, the permit application made under 40 CFR 122.33 (see R317-8-1.10(11)) must be submitted to the Executive Secretary by:

1. March 10, 2003 if designated under 40 CFR 122.32 (a)(1) (see R317-8-1.10(10)) unless your MS4 serves a jurisdiction with a population under 10,000 and the Executive Secretary has established a phasing schedule under 40 CFR 123.35 (d)(3); or

2. Within 180 days of notice, unless the Executive Secretary grants a later date, if designated under 40 CFR 122.32(a)(2) and 40 CFR 122.33(c)(2) (see R317-8-1.10(10) and (11)).

(5) Petitions.

(a) Any operator of a municipal separate storm sewer system may petition the Executive Secretary to require a separate UPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the Executive Secretary to require a UPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

(c) The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the Census estimates of the population served by such separate system to account for storm water discharge to combined sewers that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the UPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the Director for the designation of a large, medium, or small municipal separate storm sewer system as defined by R317-8-1.6(4), (7), and (14).

(e) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of the petitions to designate a small MS4 in which case the Director shall make a final determination on the petition within 180 days after its receipt.

(6) Provisions Applicable to Storm Water Definitions.

(a) The Director may designate a municipal separate storm sewer system as part of a large system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers described under R317-8-1.6(4)(a) or (b). In making the determination under R317-8-1.6(4)(b) the Director may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(3)(a);

3. The quantity and nature of pollutants discharged to waters of the State;

4. The nature of the receiving waters; and

5. Other relevant factors; or

The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(4).

(b) The Director may designate a municipal separate storm sewer system as part of a medium system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers describer under R317-8-1.6(7)(a) or (b). In making the determination under R317-8-1.6(7)(b) the Director may consider the following factors;

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(7)(a);

3. The quantity and nature of pollutants discharged to waters of the State;

4. The nature of the receiving waters; or

5. Other relevant factors; or

The Director may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(7)(a), (b), and (c).

(c) Storm water discharges associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program under this part R317-8. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste water (as defined in 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purpose of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (d)1. through(11.) of this section) include those facilities designated under the provisions of paragraph (1)(a)5. of this section.

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 Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

a. The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), page 21-64, dated January 1997. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street S.W., Washington, DC. 20460, or the Office of Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An Operator must certify to the Director that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

b. Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Director that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the Director based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

(7) Conditional exclusion for "no exposure" of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snow melt and/or runoff, and the discharger satisfies the conditions in paragraphs (7)(a) through (7)(d) of this section. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snow melt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(a) Qualification. To qualify for this exclusion, the operator of the discharge must:

1. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff:

2. Complete and sign (according to R317-8-3.3) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (7)(b) of this section:

3. Submit the signed certification to the Director once every five years;

4. Allow the Director or authorized representative to inspect the facility to determine compliance with the "no exposure" conditions;

5. Allow the Director or authorized representative to make any "no exposure" inspection reports available to the public upon request; and

6. For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(b) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

1. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

2. Adequately maintained vehicles used in material handling; and

3. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(c) Limitations

1. Storm water discharges from construction activities identified in paragraphs R317-8-3.9(6)(d)10. and R317-8-3.9(6)(e) are not eligible for this conditional exclusion.

2. This conditional exclusion from the requirement for an UPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

3. If circumstances change and industrial materials or

activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge become subject to enforcement for 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 Director retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(d) Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the Director in determining if the facility qualifies for the no exposure exclusion:

1. The legal name, address and phone number of the discharger (see R317-8-3.1(3)).

2. The facility name and address, the county name and the latitude and longitude where the facility is located;

3. The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

a. Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

b. Materials or residuals on the ground or in storm water inlets from spills/leaks;

c. Materials or products from past industrial activity;

d. Materials handling equipment (except adequately maintained vehicles);

e. Materials or products during loading/unloading or transporting activities;

f. Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge to pollutants);

g. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

h. Materials or products handled/stored on roads or railways owned or maintained by the discharger;

i. Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

j. Application or disposal of process wastewater (unless otherwise permitted); and

k. Particulate matter or visible deposits or residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.

4. All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of R317-8-3.3 "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from UPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (7)(b) of this section). I understand that I am obligated to submit a no exposure certification form once every five years to the Director and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the Director or authorized representative or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and make such inspection reports publicly available upon request. I understand that I must obtain coverage under a UPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(8) The Director may designate small MS4's other than those described in 40 CFR 122.32(a)(1) (see also R317-8-1.10(10)) to be covered under the UPDES storm water permit program, and require a UPDES storm water permit. Designations of this kind will be based on whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts; and shall apply to any small MS4 located outside of an urbanized area serving a population density of at least 1,000 people per square mile and a population of at least 10,000.

(a) Criteria used in designation may include;

1. discharge(s) to sensitive waters,

2. areas with high growth or growth potential,

3. areas with a high population density,

4. areas that are contiguous to an urbanized area,

5. small MS4's that cause a significant contribution of pollutants to waters of the State,

6. small MS4's that do not have effective programs to protect water quality by other programs, or

7. other appropriate criteria.

(b) Permits for designated MS4's under this paragraph shall be under the same requirements as small MS4's designated under 40 CFR 122.32(a)(1) (see also R317-8-1.10(10)).

3.10 SILVICULTURAL ACTIVITIES

(1) Permit requirements. Silvicultural point sources, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

(b) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(c) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

3.11 APPLICATION REQUIREMENTS FOR NEW AND EXISTING POTWS.

(1) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Director.

(a) All POTWs with design influent flows equal to or greater than one million gallons per day; and

(b) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(2) In addition to the POTWs listed in R317-8-3.11(1)(a) and (b) the Director may require other POTWs to submit the

results of toxicity tests with their permit applications, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(b) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; or

(e) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Director determines could cause or contribute to adverse water quality impacts.

(3) For POTWs required under 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 Director regarding the testing methodology to be used.

(4) All POTWs with approved pretreatment programs shall provide to the Director a written technical evaluation of the need to revise local limits.

3.12 PRIMARY INDUSTRY CATEGORIES. Any UPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the UPDES rules and Sections 301(b)(2)(A),(C),(D),(E) and (F) of the CWA whether or not applicable effluent limitations guidelines have been promulgated.

(1) Adhesives and sealants
(2) Aluminum forming
(3) Auto and other laundries
(4) Battery manufacturing
(5) Coal mining
(6) Coil coating
(7) Copper forming
(8) Electrical and electronic components
(9) Electroplating
(10) Explosives manufacturing
(11) Foundries
(12) Gum and wood chemicals
(13) Inorganic chemicals manufacturing
(14) Iron and steel manufacturing
(15) Leather tanning and finishing
(16) Mechanical products manufacturing
(17) Nonferrous metals manufacturing
(18) Ore mining
(19) Organic chemicals manufacturing
(20) Paint and ink formulation
(21) Pesticides
(22) Petroleum refining
(23) Pharmaceutical preparations
(24) Photographic equipment and supplies
(25) Plastics processing
(26) Plastic and synthetic materials manufacturing
(27) Porcelain enameling
(28) Printing and publishing
(29) Pulp and paper mills
(30) Rubber processing
(31) Soap and detergent manufacturing
(32) Steam electric power plants
(33) Textile mills
(34) Timber products processing

3.13 UPDES PERMIT APPLICATION TESTING REQUIREMENTS

TABLE I
Testing Requirements for Organic Toxic Pollutants
by Industrial Category for Existing Dischargers

	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 rules must be given in the permit. In addition to conditions required in all UPDES permits, the Director will establish conditions as required on a case-by-case basis under 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 Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by the permit.

(9) Inspection and Entry. The permittee shall allow the Director, or an authorized representative, including an authorized contractor acting as a representative of the Director) upon the presentation of credentials and other documents as may be required by law to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times for the purposes of assuring UPDES program compliance or as otherwise authorized by the Utah Water Quality Act any substances or parameters, or practices at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. Records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, shall be retained for a period of at least five years or longer as required by State promulgated standards for sewage sludge use and disposal.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) and times analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR 136 or in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use or disposal, unless other test procedures, approved by EPA under 40 CFR 136, have been specified in the permit.

(e) Section 19-5-115(3) of the Utah Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be punished by a fine not exceeding $10,000 or imprisonment for not more than six months or by both.

(11) Signatory Requirement. All applications, reports, or information submitted to the Director shall be signed and certified as indicated in R317-8-3.4. The Utah Water Quality Act provides that any person who knowingly makes any false statements, representations, or certifications in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months or by both.

(12) Reporting Requirements.

(a) Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 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 Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the Director. The Director may require modification on and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Utah Water Quality Act, as amended. (In some cases, modification, revocation and reissuance is mandatory.)

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or

disposal practices. Monitoring results may also be submitted electronically to the EPA's NetDMR program, if a Subscriber Agreement is in place. See Utah Admin. Code R317-1-9.

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or the in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use and disposal, or as specified in the permit according to procedures approved by EPA, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

(e) Compliance Schedules. Reports of compliance or noncompliance with, or any progress report on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen days following each scheduled date.

(f) Twenty-Four Hour Reporting. The permittee shall (orally) report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. (The report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance.) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. (The Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.) The following shall be included as events which must be reported within twenty-four hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in R317-8-4.1(13).

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four hours, as indicated in R317-8-4.2(7). The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(g) Other NonCompliance. The permittee shall report all instances of noncompliance not reported under 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 Director, it shall promptly submit such facts or information.

(13) Occurrence of a Bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to R317-8-4.1(13)(c) or (d).

(c) Prohibition of Bypass.

1. Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of human life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance, and

c. The permittee submitted notices as required under R317-8-4.1(13)(d).

2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in R317-8-4.1(13)(c) a, b, and c.

(d) Notice.

1. Anticipated bypass. Except as provided in R317-8-4.1(13)(b) and R317-8-4.1(13)(d)2, if the permittee knows in advance of the need for a bypass, it shall submit prior notice, at least 90 days before the date of bypass. The prior notice shall include the following unless otherwise waived by the Director:

a. Evaluation of alternatives to the bypass, including cost-benefit analysis containing an assessment of anticipated resource damages;

b. A specific bypass plan describing the work to be performed including scheduled dates and times. The permittee must notify the Director in advance of any changes to the bypass schedule;

c. Description of specific measures to be taken to minimize environmental and public health impacts;

d. A notification plan sufficient to alert all downstream users, the public and others reasonably expected to be impacted by the bypass;

e. A water quality assessment plan to include sufficient monitoring of the receiving water before, during and following the bypass to enable evaluation of public health risks and environmental impacts; and

f. Any additional information requested by the Director.

2. Emergency Bypass. Where ninety days advance notice is not possible, the permittee must notify the Director, and the Director of the Department of Natural Resources, as soon as it becomes aware of the need to bypass and provide to the Director the information in R317-8-4.1(13)(d)1.a. through f. to the extent practicable.

3. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass to the Director as required in 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 rules apply to all UPDES permits within the categories specified below:

(a) Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under R317-8-4.1(12),(13), and (14), any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the Director as soon as it knows or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4 dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(7) or (10).

d. The level established by the Director in accordance with R317-8-4.2(6).

2. That any activity has occurred or will occur which would result in any discharge on a non-routine or infrequent basis of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 ug/l).

b. One milligram per liter (1 mg/l) for antimony.

c. Ten times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(9).

d. The level established by the Director in accordance with R317-8-4.2(6).

(b) POTWs. POTWs shall provide adequate notice to the Director of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the UPDES rules if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW; and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been determined by the Director under R317-8-3.9(1)(a)5 of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

1. The status of implementing the components of the storm water management program that are established as permit conditions;

2. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with R317-8-3.9(3)(b)3; and

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under R317-8-3.9(3)(b)4 and 3.9(3)(b)5;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs;

7. Identification of water quality improvements or degradation.

4.2 ESTABLISHING PERMIT CONDITIONS. For the purposes of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in 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 Director shall institute proceedings under these rules to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener Clause. For any discharger within a primary industry category, as listed in 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 Director shall promptly modify or revoke and reissue any permit containing the clause required under R317-8-4.2(3)(a)1 to incorporate an applicable effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(d) For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal adopted by the State. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitation guidelines or standards will be included, when necessary to:

(a) Achieve water quality standards established under the Utah Water Quality Act, as amended and rules promulgated pursuant thereto, including State narrative criteria for water quality.

1. Permit limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

2. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the Director shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

3. When the Director determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

4. When the Director determines, using the procedures in 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 Director determines, using the procedures in R317-8-4.2(4)(2), toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit will contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Director determines in the fact sheet or statement of basis of the UPDES permit, using the procedures in R317-8-4.2(4)(2), that chemical specific limits for effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

6. Where the State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard the Director will establish effluent limits using one or more of the following options:

a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the Director determines will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or rule interpreting its narrative water quality criteria supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents:

b. Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 307(a) of the CWA, supplemented where necessary by other relevant information; or

c. Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitations;

(ii) The fact sheet as required by .4 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(iv) The permit contains a reopener clause allowing the Director to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

7. When developing water quality-based effluent limits under this paragraph the Director shall ensure that:

a. The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(b) Attain or maintain a specified water quality through water quality related effluent limits established under the Utah Water Quality Act;

(c) Conform to applicable water quality requirements when the discharge affects a state other than Utah;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or regulations.

(e) Ensure consistency with the requirements of any Utah Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 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 Director determines, based on information reported in a permit application under R317-8-3.5(7) and (10), or in a notification under R317-8-4.1(15)(a) of this rule or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3)(a),(b) and (c).

2. The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection will be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the Director, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by R317-8-7.1(3)(a), (b) and (c).

(6) Notification Level. A "notification level" which exceeds the notification level of R317-8-4.1(15) upon a petition from the permittee or on the Director's initiative will be incorporated as a permit condition, if applicable. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3).

(7) Twenty-Four (24) Hour Reporting. Pollutants for which the permittee will report violations of maximum daily discharge limitations under R317-8-4.1(12)(f) shall be listed in the permit. This list will include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring Requirements. The permit will incorporate, as applicable in addition to R317-8-4.1(12) the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor;

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall;

3. Other measurements as appropriate, including pollutants in internal waste streams under R317-8-4.3(8); pollutants in intake water for net limitations under R317-8-4.3(7); frequency and rate of discharge for noncontinuous discharges under R317-8-4.3(5); pollutants subject to notification requirements under R317-8-4.1(15)(a); and pollutants in sewage sludge or other monitoring as specified in State rules for sludge use or disposal or as determined to be necessary pursuant to R317-8-2.1.

4. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(b) Except as provided in paragraphs (8)(d) and (8)(e) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be a specified in R317-8-1.10(8) (where applicable), but in no case less than once a year.

(c) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(d) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (c)above) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require;

1. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

2. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

3. Such report and certification be signed in accordance with R317-8-3.4; and

4. Permits for storm water discharges associated with industrial activity from inactivite mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(e) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under R317-8-4.1(12)(a),(d),(e), and (f) at least annually.

(9) Pretreatment Program for POTWs. If applicable to the facility the permit will incorporate as a permit condition, requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the UPDES rules.

(b) Submit a local program when required by and in accordance with R317-8-8.10 to assure compliance with pretreatment standards to the extent applicable in the UPDES rules. The local program will be incorporated into the permit as described in R317-8-8.10. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(c) For POTWs which are "sludge-only facilities", a requirement to develop a pretreatment program under R317-8-8 when the Director determines that a pretreatment program is necessary to assure compliance with State rules governing sludge use or disposal.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Authorized under the Utah Water Quality Act as amended and the UPDES rule for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible, or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Utah Water Quality Act, as amended.

(11) Reissued Permits.

(a) Except as provided in R317-8-4.2(11)(b), when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under R317-8-5.6.

(b) In the case of effluent limitations established on the basis of Section 19-5-104 of the Utah Water Quality Act, a permit may not be renewed, reissued, or modified on the basis

of effluent guidelines promulgated by EPA under section 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(c) Exceptions--A permit with respect to which R317-8-4.2(11)(b) applies may be renewed, reissued or modified to contain a less stringent effluent limitation applicable to a pollutant, if--

1. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation; and

2. a. Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

b. The Director determines that technical mistakes or mistaken interpretations of law were made in issuing the permit;

3. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

4. The permittee has received a permit modification under R317-8-5.6; or

5. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(d). Limitations. In no event may a permit with respect to which R317-8-4.2(11)(b) applies be renewed, reissued or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of the water quality standard applicable to such waters.

(12) Privately Owned Treatment Works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this rule will be imposed as applicable. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits or to require separate applications, and the basis for that decision will be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants. Any conditions imposed in grants or loans made by the Director 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 Director may initiate proceedings under these rules to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

(18) Qualifying State or local programs.

(a) For storm water discharges associated with small construction activity identified in R317-8-3.9(6)(e), the Director may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. Where a qualifying State or local program does not include one or more of the elements in this paragraph then the Director must include those elements as conditions in the permit. A qualifying State or local erosion and sediment control program is one that includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

3. Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions of appropriate control measures, copies of approved State, local requirements, maintenance procedures, inspections procedures, and identification of non-storm water discharges); and

4. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(b) For storm water discharges from construction activity identified in R317-8-3.9(6)(d)10., the Director may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. A qualifying State or local erosion and sediment control program is one that includes the elements listed in paragraph (18)(a) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

4.3 CALCULATING UPDES PERMIT CONDITIONS. The following provisions will be used to calculate terms and conditions of the UPDES permit.

(1) Outfalls and Discharge Points. All permit effluent limitations, standards, and prohibitions will be established for each outfall or discharge point of the permitted facility, except as otherwise provided under R317-8-4.2(10) with BMPs where limitations are infeasible; and under R317-8-4.3(8), limitations on internal waste streams.

(2) Production-Based Limitations.

(a) In the case of POTWs, permit effluent limitations, standards, or prohibitions will be calculated based on design flow.

(b) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on

production, or other measure of operation, will be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production will correspond to the time period of the calculated permit limitations; for example, monthly production will be used to calculate average monthly discharge limitations. The Director may include a condition establishing alternate permit standards or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(c) For the automotive manufacturing industry only, the Director may establish a condition under R317-8-4.3(2)(b)2 if the applicant satisfactorily demonstrates to the Director at the time the application is submitted that its actual production, as indicated in R317-8-4.3(2)(b)1, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(d) If the Director establishes permit conditions under and R317-8-4.3(2)(c):

1. The permit shall require the permittee to notify the Director at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

2. The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Director under R317-8-4.3(2)(d)1, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

3. The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal will be expressed in terms of the total recoverable metal, that is, the sum of the dissolved and suspended fractions of the metal, unless:

(a) An applicable effluent standard or limitation has been promulgated by EPA and specifies the limitation for the metal in the dissolved or valent form; or total form; or

(b) In establishing permit limitations on a case-by-case basis under R317-8-7, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Utah Water Quality Act; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form.

(4) Continuous Discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable will be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Non-continuous Discharges. Discharges which are not continuous, as defined in R317-8-1.5(7), shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency; for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass; for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge for example, not to exceed 2 kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure, (for example, shall not contain at any time more than 0.05 mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge).

(6) Mass Limitations.

(a) All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If, in establishing permit limitations on a case-by-case basis under R317-8-7.1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation; (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit will require the permittee to comply with both limitations.

(7) Pollutants in Intake Water.

(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in effluent guidelines and standards provide that they shall be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or used to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Director may waive this requirement if he finds that no environmental degradation will result.

(e) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(8) Internal Waste Streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the

monitoring required by R317-8-4.2(8) shall also be applied to the internal waste streams.

(b) Limits on internal waste streams will be imposed only when the fact sheet under R317-8-6.4 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under 10 meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) Disposal of Pollutants Into Wells, Into POTWs, or by Land Application. Permit limitations and standards shall be calculated as provided in R317-8-2.6.

(10) Secondary Treatment Information. Permit conditions that involve secondary treatment will be written as provided in 40 CFR Part 133, except that Utah effluent limits for secondary treatment will be used.

R317-8-5. 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 Director may issue any permit for a duration that is less than the full allowable term under this section.

(4) A permit that would expire on or after the Federal statutory deadline set forth in section 301(b)(2) (A), (C), and (E) of the CWA, may be issued to expire after the deadline if the permit includes effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

(5) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

5.2 SCHEDULES OF COMPLIANCE

(1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Utah Water Quality Act, as amended, and rules promulgated pursuant thereto.

(a) Time for compliance. Any schedules of compliance under this section will require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(b) The first UPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing discharges, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(c) Interim dates. Except as provided in R317-8-5.2(2)(a)2 if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule will set forth interim requirements and the dates for their achievement.

1. The time between interim dates will not exceed one (1) year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates will not exceed six months.

2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit will specify interim dates, (but not more than one interim date per calendar year per project phase or segment), for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) Reporting. The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(2) Alternative Schedules of Compliance. A UPDES permit applicant or permittee may cease conducting regulated activities (by termination of direct discharge for UPDES sources), rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit will contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

1. Both schedules will contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One schedule shall lead to timely compliance no later than the statutory deadline in the CWA;

3. The second schedule will lead to cessation of regulated activities by a date which will ensure timely compliance with the applicable requirements no later than the deadline specified in R317-8-7;

4. Each permit containing two schedules will include a requirement that after the permittee has made a final decision under R317-8-5.2(2)(c), it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the Board of Directors of a corporation.

5.3 REQUIREMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS. All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(3) Applicable reporting requirements based upon the

impact of the regulated activity and as specified in R317-8-4.1 and 4.2. Reporting shall be no less frequent than specified in the above section.

5.4 EFFECT OF A PERMIT

(1) Except for any toxic effluent standards and prohibitions included in R317-8-4.1(1)(b) and any standards adopted by the State for sewage sludge use or disposal, compliance with a UPDES permit during its term constitutes compliance, for purposes of enforcement, with the UPDES program. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R317-8-5.6 and 5.7.

(2) The issuance of a permit does not convey any property rights or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(4) Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage use or disposal under the UPDES program.

5.5 TRANSFER OF PERMITS

(1) Transfers by Modification. Except as provided in R317-8-5.5(2) a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under R317-8-5.6 or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the UPDES rules.

(2) Automatic Transfers. As an alternative to transfers under subsection (1) of this section, any UPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the Director at least thirty (30) days in advance of the proposed transfer date in R317-8-5.5(2)(b).

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(c) The Director does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under R317-8-5.6(3). If this notice is not received, the transfer is effective on the date specified in the agreement under R317-8-5.5(2)(b).

5.6 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMIT

The Director may determine whether or not one or more of the causes, listed in R317-8-5.6(1) and (2) for modification or revocation and reissuance or both, exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in R317-8-5.6(3) for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the procedures in R317-8-6 must be followed.

(1) Causes for Modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees to revocation and reissuance as well as modification of a permit.

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, such alterations may justify the application of revised permit conditions which are different or absent in the existing permit.

(b) Information. Information received by the Director regarding permitted activities may show cause for modification. UPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, (except for revised regulations, guidance or test methods) and would have justified application of different conditions at the time of permit issuance. In addition, the applicant must show that the information would have justified the application of different permit conditions at the time of issuance. For UPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New Regulations. If the standards or rules on which the permit was based have been changed by promulgation of amended standards or rules or by judicial decision after the permit was issued permits may be modified during their terms for this case only as follows:

1. For promulgation of amended standards or rules, when:

a. The permit condition requested to be modified was based on promulgated effluent limitation guidelines or promulgated water quality standards; or the Secondary Treatment Regulations; and

b. EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based or has approved the Director's action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with R317-8-6.1 within ninety (90) days after the amendment, revision or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with R317-8-6.2 within ninety (90) days of judicial remand.

(d) Compliance Schedules. A permit may be modified if the Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case will a UPDES compliance schedule be modified to extend beyond an applicable statutory deadline in R317-8-7.

(e) In addition the Director may modify a permit:

1. When the permittee has filed a request for a variance under R317-8-2.3, R317-8-2.7 or for "fundamentally different factors" within the time specified in R317-8-3 or R317-8-7.7(8)a (and the Director processes the request under the applicable provisions).

2. When required to incorporate an applicable toxic effluent standard or prohibition under R317-8-4.2(2).

3. When required by the "reopener" conditions in a permit, which are established in the permit under R317-8-4.2(3) for toxic effluent limitations and standards for sewage sludge use or disposal.

4. Upon request of a permittee who qualifies for effluent limitations on a net basis under R317-8-4.3(8).

5. When a discharger is no longer eligible for net limitations, as provided in R317-8-4.3(8).

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be

achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(2)(c).

8. To establish a "notification level" as provided in R317-8-4.2(6).

9. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility in the case of the POTW which has received a grant from EPA of 100% of the cost to modify or replace the facilities. In no case will the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

10. Upon failure of the Director to notify an affected state whose waters may be affected by a discharge from Utah.

11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

12. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

13. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

(2) Causes for Modification or Revocation and Reissuance. The following are causes to modify or alternatively revoke or reissue a permit:

(a) Cause exists for termination under R317-8-5.7 and the Director determines that modification or revocation and reissuance is appropriate.

(b) The Director has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of R317-8-6. Any permit modification not processed as a minor modification under this section must be made for cause and with a Section R317-8-6 draft permit and public notice as required under this section. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the ;Director

(e) Change the construction schedule for a discharger which is a new source. No such change shall affect a disclosure obligation to have all pollution control equipment installed and in operation prior to discharge; or

(f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in R317-8-8.10 (or a modification thereto that has been approved in accordance with the procedures in R317-8-8.16 as enforceable conditions of the POTW's permits).

5.7 TERMINATION OF PERMIT

(1) The following are causes for terminating a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time;

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(d) When there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit; for example, plant closure or termination of discharge by connection to a POTW.

(2) The Director will follow the applicable procedures of R317-8-6.2 in terminating UPDES permits under this section.

R317-8-6. Review Procedures.

6.1 REVIEW OF THE APPLICATION

(1) Any person who requires a permit under the UPDES program shall complete, sign and submit to the Director an application for the permit as required under R317-8-3.1. Applications are not required for UPDES general permits. (However, operators who elect to be covered by a general permit shall submit written notification to the Director at such time as the Director indicates in R317-8-6.3)

(2) The Director will not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by R317-8-3.1; or for concentrated animal feeding operations, as required by R317-8-10.

(3) Permit applications must comply with the signature and certification requirements of R317-8-3.1.

(4) Each application submitted by a UPDES new source or UPDES new discharger should be reviewed for completeness by the Director within thirty (30) days of its receipt. Each application for a UPDES permit submitted by an existing source or sludge-only facility will be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing source or sludge-only facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the Utah Water Quality Act, as amended and rules promulgated pursuant thereto.

(6) If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant will be notified and a date scheduled.

(7) The effective date of an application is the date on which the Director notified the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source,

or major facility new discharger, the Director shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the Director intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing;

(d) Issue a final permit; and

6.2 REVIEW PROCEDURES FOR PERMIT MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS

(1) Permits may only be modified, revoked and reissued, or terminated for the reasons specified in R317-8-5.6. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or adjudicatory proceeding.

(3) If the Director tentatively decides to modify or revoke and reissue a permit under R317-8-5.6, he or she shall prepare a draft permit under R317-8-6.3 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

(a) In a permit modification under .2, only those conditions to be modified will be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under .2, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as defined in R317-8-5.6(3) are not subject to the requirements of .2.

(4) If the Director tentatively decides to terminate a permit under R317-8-5.7, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under R317-8-6.3.

6.3 DRAFT PERMITS

(1) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the Director tentatively decides to deny the permit application, then he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the Director's final decision (under R317-8-6.11) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under R317-8-6.3(4).

(3) If the Director tentatively decides to issue a UPDES general permit, he or she shall prepare a draft general permit in accordance with R317-8-6.3(4).

(4) If the Director decides to prepare a draft permit he or she shall prepare a draft permit that contains the following information:

(a) All conditions under R317-8-4.1;

(b) All compliance schedules under R317-8-5.2;

(c) All monitoring requirements under R317-8-5.3;

(d) Effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under R317-8-3, 8-4, 8-5, 8-6, and 8-7 and all variances that are to be included.

(5) All draft permits prepared under this section shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The Director will give notice of opportunity for a public hearing, issue a final decision and respond to comments.

(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 Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The type and quantity of wastes, fluids or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period and the address where comments will be received;

2. Procedures for requesting a public hearing and the nature of that hearing; and

3. Any other procedures by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

(3) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, or standards for sewage sludge use and disposal, including a citation to the applicable effluent limitation guideline or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(4)(a) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

1. Limitations to control toxic pollutants under R317-8-4.2(5);

2. Limitations on internal waste streams under R317-8-4.3(8);

3. Limitations on indicator pollutant;

4. Limitations set on a case-by-case basis under R317-8-7.1(3)(b) or (c).

(b) For every permit to be issued to a treatment works owned by a person other than the State or a municipality, an explanation of the Director's decision on regulation of users under R317-8-4.2(12).

(5) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

(6) For permits that include a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit.

(7) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

6.5 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD

(1) Scope.

(a) The Director will give public notice that the following actions have occurred:

1. A permit application has been tentatively denied under R317-8-6.3(2); or

2. A draft permit has been prepared under R317-8-6.3(4);

3. A public hearing has been scheduled under R317-8-6.7; and

4. A UPDES new source determination has been made in accordance with the definition in R317-8-1.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under .2. Written notice of the denial will be given to the requester and to the permittee.

(c) Public notices may describe more than one permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under R317-8-6.5(1) will allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(3) Methods. Public notice of activities described in R317-8-6.5(1)(a) will be given by the following methods:

(a) By mailing a copy of a notice to the following persons (Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.):

1. The applicant, except for UPDES general permittees, and Region VIII, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Utah Historic Society and other appropriate government authorities, including any affected states;

3. The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service.

4. Any user identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The name of any person who fails to respond to such a request may be deleted from the list.

6. Any unit of local government having jurisdiction over the area where the facility is proposed to be located and each State agency having any authority under State law with respect to construction or operation of such facility.

7. Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Federal Clean Air Act, NPDES, 404, or sludge management permit).

(b) For major permits, UPDES general permits, and permits that include sewage sludge and application plans, the Director will publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Utah law; and

(d) Any other method reasonably determined to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices issued under this part shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of UPDES draft general permits under R317-8-2.5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for UPDES general permits when there is no application;

4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, statement of basis or fact sheet, and the application; and

5. A brief description of the comment procedures and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. For UPDES permits only (including those for sludge-only facilities), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

7. Any additional information considered necessary or appropriate.

(b) Public notices for public hearings. In addition to the general public notice described in .5(4) the public notice for a permit hearing under R317-8-6.7 will contain the following information:

1. Reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing;

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under R317-8-2.3(4). In addition to the information required under R317-8-6.5(4)(a) public notice of a UPDES draft permit for a discharge when a R317-8-2.3(4) request has been filed will include:

1. A statement that the thermal component of the discharge

is subject to effluent limitations under R317-8-4.2(1) and a brief description, including a quantitative statement of the thermal effluent limitations; and

2. A statement that a R317-8-2.3(4) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

3. If the applicant has filed an early screening request under R317-8-7.4(4) for a variance, a statement that the applicant has submitted such a plan.

(5) In addition to the general public notice described in .5(4) all persons identified in .5(3)(a)1-4 will be mailed a copy of the fact sheet, the permit application and the draft permit.

6.6 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS

During the public comment period provided under R317-8-6.5, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and shall be answered as provided in R317-8-6.12.

6.7 PUBLIC HEARINGS

(1) The Director shall hold a public hearing when he or she finds on the basis of request(s), a significant degree of public interest in draft permits. The Director also may hold a public hearing at his or her discretion whenever a hearing might clarify one or more issues involved in the permit decision.

(2) Public notice of the hearing will be given as specified in R317-8-6.5.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R317-8-6.5 will automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

6.8 OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION DURING THE PUBLIC COMMENT PERIOD

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under R317-8-6.5. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative records in the same proceeding or consist of state or federal statutes and regulations, EPA or the Director's documents of general applicability, or other generally available reference materials. Persons making comment shall make supporting material not already included in the administrative record available to the Director. Additional time shall be granted under R317-8-6.5 to the extent that a person desiring to comment who requests additional time demonstrates need for such time.

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 Director in writing that anchorage and navigation of the waters of the State would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers and may not be made through the procedures provided in this rule. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures or the Corps of Engineers, those conditions shall be considered stayed in the UPDES permit for the duration of that stay.

(2) If, during the comment period, the U.S. Fish and Wildlife Service or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Utah Water Quality Act, as amended, and of CWA.

(3) In appropriate cases the Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis or fact sheet, or the draft permit.

6.10 REOPENING OF THE PUBLIC COMMENT PERIOD

(1) The Director may order the public comment period reopened if the procedures of this section could expedite the decision making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date not less than sixty days after public notice under paragraph (2) of this section, set by the Director. Thereafter, any person may file a written response to the material filed by any other person, by a date not less than twenty days after the date set for filing of the material, set by the Director.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of this section shall apply.

(3) On his own motion or on the request of any person, the Director may direct that the requirements of paragraph (1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give persons desiring to comment a reasonable opportunity to comply with the requirements of this section. Persons desiring to comment may request longer comment periods and they shall be granted under R317-8-6.5 to the extent they appear necessary.

(5) If any data information or arguments submitted during the public comment period, including information or arguments required under R317-8-6.8, appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under R317-8-6.3;

(b) Prepare a revised statement of basis under R317-8-6.3(6) a fact sheet or revised fact sheet under R317-8-6.4 and

reopen the comment period under R317-8-6.10; or

(c) Reopen or extend the comment period under R317-8-6.5 to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under R317-8-6.5 shall define the scope of the reopening.

(7) For UPDES permits, the Director may also, in the circumstances described above, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in paragraph (5) of this section.

(8) Public notice of any of the above actions shall be issued under R317-8-6.5.

6.11 ISSUANCE AND EFFECTIVE DATE OF PERMIT

After the close of the public comment period under R317-8-6.5, the Director will issue a final permit decision. The Director will notify the applicant and each person who has submitted written comments or requested notice of that decision. The notice shall include reference to the procedures for contesting the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

6.12 RESPONSE TO COMMENTS

(1) At the time that any final permit decision is issued under R317-8-6.11, the Director shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The response will fully consider all comments resulting from any hearing conducted under this rule.

(c) The response to the comments shall be available to the public.

R317-8-7. Criteria and Standards.

7.1 CRITERIA AND STANDARDS FOR TECHNOLOGY-BASED TREATMENT REQUIREMENTS

(1) Purpose and scope. This section establishes criteria and standards for the imposition of technology-based treatment requirements and represents the minimum level of control that must be imposed in a UPDES permit. Permits will contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:

(a) For POTW's effluent limitations based upon:

1. Utah secondary treatment from date of permit issuance; and

2. The best practicable waste treatment technology from date of permit issuance.

(b) For dischargers other than POTWs, except as otherwise provided, effluent limitations requiring:

1. The best practicable control technology currently available (BPT) --

a. For effluent limitations promulgated after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case basis based on Best Professional Judgment (BPJ) in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than May 31, 1989;

c. For all other BPT effluent limitations compliance is required from the date of permit issuance.

2. For conventional pollutants the best conventional pollutant control technology (BCT) --

a. For effluent limitations promulgated under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case (BPJ) basis in a permit issued after February 4, 1987 compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989;

c. For all other BCT effluent limitations compliance is required from the date of permit issuance.

3. For all toxic pollutants referred to in Committee Print No. 95-30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT) --

a. For effluent limitations established under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For permits issued on a case-by-case (BPJ) basis after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under Section 304(b)of the CWA and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

4. For all toxic pollutants other than those listed on Committee Print No. 95-30, effluent limitations based on BAT --

a. For effluent limitations promulgated under Section 304(b) of the CWA, compliance is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

5. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT --

a. For effluent limitations promulgated under section 304(b), compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations compliance is required as expeditiously as practicable but in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

(2) Variances and Extensions.

(a) The following variance from technology-based treatment requirements may be applied for under R317-8-2 for dischargers other than POTWs:

1. Economic variance from BAT, as indicated in R317-8-2.3(2);

2. Section 301(g) water quality related variance from BAT;

3. Thermal variance from BPT, BCT and BAT, under

R317-8-7.4. may be authorized.

(b) An extension of the BPT deadline may be applied for under R317-8-2.3(3) for dischargers other than POTW's, for use of innovative technology. Compliance extensions may not extend beyond July 1, 1987.

(3) Methods of imposing technology-based treatment requirements in permits. Technology-based treatment requirements may be imposed through one of the following three methods:

(a) Application of EPA-promulgated effluent limitations to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been withdrawn by EPA or remanded. In the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variance from these effluent limitations under R317-8-2.3(1) and R317-8-7.3;

(b) On a case-by-case basis to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors and shall consider:

1. The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information.

2. Any unique factors relating to the applicant.

(c) Through a combination of the methods in paragraphs (a) and (b) of this section. Where EPA promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutant, other aspects or activities are subject to regulation on case-by-case basis in order to carry out the provisions of the CWA;

(d) Limitations developed under paragraph (c)2 of this section may be expressed, where appropriate, in terms of toxicity provided it is shown that the limits reflect the appropriate requirements of the act;

(e) In setting case-by-case limitations pursuant to R317-8-7.1(3), the permit writer must consider the following factors:

1. For BPT requirements:

a. The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

b. The age of equipment and facilities involved;

c. The process employed;

d. The engineering aspects of the application of various types of control techniques;

e. Process changes; and

f. Non-water quality environmental impact (including energy requirements).

2. For BCT requirements:

a. The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

b. The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

c. The age of equipment and facilities involved;

d. The process employed;

e. The engineering aspects of the application of various types of control techniques;

f. Process changes; and

g. Non-water quality environmental impact (including energy requirements).

3. For BAT requirement:

a. The age of equipment and facilities involved;

b. The process employed;

c. The engineering aspects of the application of various types of control techniques;

d. The cost of achieving such effluent reduction; and

e. Non-water quality environmental impact (including energy requirements).

(f) Technology-based treatment requirements are applied prior to or at the point of discharge.

(4) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(a) The technology based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(b) The discharger agrees to waive any opportunity to request a variance under R317-8-2.3;

(c) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(5) Technology-based effluent limitations will be established for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(6)(a) The Director may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or limit for a nonconventional pollutant which shall not be subject to modification where:

1. Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

2.a. The limitation reflects BAT-level control of discharges of one or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

b. The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level control of the toxic pollutant discharges identified in (6)(l)(b)(ii) of this section, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

(b) The Director may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

1. Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substances; or

2.a. The limitation reflects BAT-level, co-control of discharges, or an appropriate level of one or more hazardous substance(s) which are present in the waste stream, and a specific BAT or other appropriate limitation upon the hazardous substance which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substance is not feasible for economic or technical reasons;

b. The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level, or other appropriate level, control of the hazardous substances discharges identified in (6)(l)(b)(ii) of this section, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

d. Hazardous substances which are also toxic pollutants are subject to R317-8-7.1(6).

(3) The Director may not set more stringent limits under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substances) controlled by

the limit were limited directly.

(d) Toxic pollutants identified under R317-8-7.1(6) remain subject to R317-8-4.1(15) which requires notification of increased discharges of toxic pollutants above levels reported in the application form.

7.2 CRITERIA FOR ISSUANCE OF PERMITS TO AQUACULTURE PROJECTS

(1) Purpose and scope.

(a) This section establishes guidelines for approval of any discharge of pollutants associated with an aquaculture project.

(b) This section authorizes, on a selective basis, controlled discharges which would otherwise be unlawful under the Utah Water Quality Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially.

(c) Permits issued for discharges into aquaculture projects under this section are UPDES permits and are subject to all applicable requirements. Any permit will include such conditions, including monitoring and reporting requirements, as are necessary to comply with the UPDES rules. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

(2) Criteria.

(a) No UPDES permit will be issued to an aquaculture project unless:

1. The Director determines that the aquaculture project:

a. Is intended by the project operator to produce a crop which has significant direct or indirect commercial value, or is intended to be operated for research into possible production of such a crop; and

b. Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

2. The applicant has demonstrated, to the satisfaction of the Director, that the use of the pollutant to be discharged to the aquaculture project shall result in an increased harvest of organisms under culture over what would naturally occur in the area;

3. The applicant has demonstrated, to the satisfaction of the Director, that if the species to be cultivated in the aquacultural project is not indigenous to the immediate geographical area, there shall be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

4. The Director determines that the crop will not have significant potential for human health hazards resulting from its consumption;

5. The Director determines that migration of pollutants from the designated project area to waters of the State outside of the aquaculture project will not cause or contribute to a violation of the water quality or applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit will be issued for any aquaculture project in conflict with a water quality management plan or an amendment to a 208 plan approved by EPA.

(c) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.

(d) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

7.3 CRITERIA AND STANDARDS FOR DETERMINING FUNDAMENTALLY DIFFERENT FACTORS

(1) Purpose and scope.

(a) This section establishes the criteria and standards to be used in determining whether effluent limitations required by effluent limitations guidelines hereinafter referred to as "national limits", should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This section applies to all national limits promulgated except for best practicable treatment (BPT) standards for stream electric plants.

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(g) of the Clean Water Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under R317-8-2.3(1). In addition, such a variance may be proposed by the Director in the draft permit.

(2) Criteria.

(a) A request for the establishment of effluent limitations under this section shall be approved only if:

1. There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

2. Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limit; and

3. The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of R317-8-6.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines will be approved only if:

1. The alternative effluent limitation requested is not less stringent than justified by the fundamental difference; and

2. The alternative effluent limitation or standard will ensure compliance with the UPDES rules and the Utah Water Quality Act.

3. Compliance with the national limits, either by using the technologies upon which the national limits are based or by other control alternative, would result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

1. The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative effluent limitation or standard would not result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

1. The nature or quality of pollutants contained in the raw wasteload of the applicant's process wastewater;

2. The volume of the discharger's process wastewater and effluent discharged;

3. Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

4. Energy requirements of the application of control and treatment technology;

5. Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

6. Cost of compliance with required control technology.

(c) A variance request or portion of such a request under this section will not be granted on any of the following grounds:

1. The infeasibility of installing the required waste treatment equipment within the time allowed in R317-8-7.1.

2. The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

3. The discharger's ability to pay for the required waste-treatment; or

4. The impact of a discharge on local receiving water quality.

(3) Method of application.

(a) A written request for a variance under this rule shall be submitted in duplicate to the Director in accordance with R317-8-6.

(b) The burden is on the person requesting the variance to explain that:

1. Factor(s) listed in subsection (2) of this section regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The person making the request shall refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication relevant to the rules.

2. The alternative limitations requested are justified by the fundamental difference alleged in subparagraph 1 of this subsection; and

3. The appropriate requirements of subsection 2 of this section have been met.

7.4 CRITERIA FOR DETERMINING ALTERNATIVE EFFLUENT LIMITATIONS

(1) Purpose and scope. The factors, criteria and standards for the establishment of alternative thermal effluent limitations will be used in UPDES permits and will be referred to as R317-8-2.3(4) variances.

(2) Definitions. For the purpose of this section:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under R317-8-2.3(4).

(b) "Representative important species" means species which are representative of a balanced, indigenous community of shellfish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with R317-8-4.1(l)(6) and may not include species whose presence of abundance is attributable to alternative effluent limitations imposed pursuant to R317-8-2.3(4).

(3) Early screening of applications for R317-8-2.3(4) variance.

(a) Any initial application for the variance shall include the following early screening information:

1. A description of the alternative effluent limitation requested;

2. A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

3. A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

4. Such data and information as may be available to assist the Director in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a) of this subsection, the discharger shall consult with the Director at the earliest practicable time, but not later than thirty (30) days after the application is filed, to discuss the discharger's early screening information. Within sixty (60) days after the application is filed, the discharger shall submit for the Director's approval a detailed plan of study which the discharger will undertake to support its R317-8-2.3(4) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies: representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Director will either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Director subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the administration.

(c) Any application for the renewal of R317-8-2.3(4) variance shall include only such information described in R317-8-7.4(3)(a) and (b) and R317-8-6 as the Director requests within sixty (60) days after receipt of the permit application.

(d) The Director shall promptly notify the Secretaries of the U.S. Departments of Commerce and Interior and any affected state of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a R317-8-2.7 (4) application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under paragraph (a) of this subsection. This request will be granted or denied at the discretion of the Director.

(4) Criteria and standards for the determination of alternative effluent limitations.

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the Director that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration shall show that the alternative effluent desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Director may consider any information contained or referenced in any applicable thermal water quality criteria and information published by the Administrator under CWA section 304(a) (33 U.S.C. Section 1314(a)) or any other information which may be relevant.

(c) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

1. That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

2. That despite the occurrence of such previous harm, the desired alternative effluent limitations, or appropriate modifications thereof, shall nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(5) In determining whether or not appreciable harm has occurred, the Director will consider the length of time in which the applicant has been discharging and the nature of the discharge.

7.5 CRITERIA AND STANDARDS FOR BEST MANAGEMENT PRACTICES

(1) Purpose and Scope.

Best management practices (BMPs) for ancillary industrial activities shall be reflected in permits, including best management practices promulgated in effluent limitations and established on a case-by-case basis in permits.

(2) Definition.

"Manufacture" means to produce as an intermediate or final product, or by-product.

(3) Applicability of best management practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic or any pollutant listed as hazardous are subject to the requirements of R317-8-7.5 for all activities which may result in significant amounts of those pollutants reaching waters of the State. These activities are ancillary manufacturing operations including: Materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

(4) Permit terms and conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable promulgated effluent limitations guideline;

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary. In issuing a permit containing BMP requirements, the Director shall consider the following factors:

1. Toxicity of the pollutant(s);

2. Quantity of the pollutants(s) used, produced, or discharged;

3. History of UPDES permit violations;

4. History of significant leaks or spills of toxic or hazardous pollutants;

5. Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commercial fishery); and

6. Any other factors determined to be relevant to the control of toxic or hazardous pollutants.

(c) Best management practices may be established in permits under R317-8-7.5(4)(b) alone or in combination with those required under R317-8-7.5(4)(a).

(d) In addition to the requirements of R317-8-7.5(4)(a) and (b), dischargers covered under R317-8-7.5(4) shall develop and implement a best management practices program in accordance with R317-8-7.5(5) which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the State.

(5) Best management practices programs.

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this subpart.

(b) The BMP program shall:

1. Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

2. Establish specific objectives for the control of toxic and hazardous pollutants.

a. Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the State due to equipment failure, improper operation, natural phenomena such as rain or snowfall.

b. Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

3. Establish specific best management practices to meet the objectives identified under R317-8-7.5(5)(b)2, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the State;

4. The BMP program: a. May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA and 40 CFR Part 151, and Storm Water Pollution Prevention Plans (SWPP),and may incorporate any part of such plans into the BMP program by reference;

b. Shall assure the proper management of solid and hazardous waste in accordance with rules promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA). Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

c. Shall address the following points for the ancillary activities in R317-8-7.4A(3):

i. Statement of policy;

ii. Spill Control Committee;

iii. Material inventory;

iv. Material compatibility;

v. Employee training;

vi. Reporting and notification procedures;

vii. Visual inspections;

viii. Preventative maintenance;

ix. Housekeeping; and

x. Security.

5. The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Director shall approve or modify the program in accordance with the requirements of this subpart. The BMP program as approved or modified shall be included in the draft permit. The BMP program shall be subject to the applicable permit issuance requirements of R317-8, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

6. Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Director for approval. If the Director approves the proposed BMP program modification, the permit shall be modified in accordance with R317-8-5.6, provided that the Director may waive the requirements for public notice and opportunity for public hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Director specifies a later date in the permit.

(c) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Director upon request.

(d) The owner or operator of a facility subject to this subpart shall amend the BMP program in accordance with the provisions of this subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the State.

(e) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under R317-8-7.5(5)(b), the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

7.6 TOXIC POLLUTANTS. References throughout the UPDES rules establish specific requirements for discharges of toxic pollutants. Toxic pollutants are listed below:

(1) Acenaphthene
(2) Acrolein
(3) Acrylonitrile
(4) Aldrin/Dieldrin
(5) Antimony and compounds
(6) Arsenic and compounds
(7) Asbestos
(8) Benzene
(9) Benzidine
(10) Beryllium and compounds
(11) Cadmium and compounds
(12) Carbon tetrachloride
(13) Chlordane (technical mixture and metabolites)
(14) Chlorinated benzenes (other than dichlorobenzenes)
(15) Chlorinated ethanes (including 1,2-dichloroethan, 1,1,1-trichloroethane, and hexachloroethane)
(16) Chloroalkyl ethers (chloromethyl, chloroethyl, and moxed ethers)
(17) Chlorinated naphthalene
(18) Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
(19) Chloroform
(20) 2-chlorophenol
(21) Chromium and compounds
(22) Copper and compounds
(23) Cyanides
(24) DDT and metabolites
(25) Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
(26) Dichlorobenzidine
(27) Dichloroethylenes (1,1- and 1,2-dichloroethylene)
(28) 2,4-dimethylphenol
(29) Dichloropropane and dichloropropene
(30) 2,4-dimethylphenol
(31) Dinitrotoluene
(32) Diphenylhydrazine
(33) Endosulfan and metabolities
(34) Ethylbenzene
(35) Enthylbenzene
(36) Fluoranthene
(37) Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
(38) Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane
(39) Heptachlor and metabolites
(40) Hexachlorobutadiene
(41) Hexachlorocyclohexane
(42) Hexachlorocyclopentadiene
(43) Isophorone
(44) Lead and compounds
(45) Mercury and compounds
(46) Naphthalene
(47) Nickel and compounds
(48) Nitrobenze
(49) Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
(50) Nitrosamines
(51) Pentachlorophenol
(52) Phenol
(53) Phthalate esters
(54) Polychlorinated biphenyls (PCBs)
(55) Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
(56) Selenium and compounds
(57) Silver and compounds
(58) 2,3,7,8-tetrachloro/dibenzo-p-dioxin (TCDD)
(59) Tetrachloroethylene
(60) Thallium and compounds
(61) Toluene
(62) Toxaphene
(63) Trichloroethylene
(64) Vinyl chloride
(65) Zinc and compounds

7.7 CRITERIA FOR EXTENDING COMPLIANCE DATES FOR FACILITIES INSTALLING INNOVATIVE TECHNOLOGY

(1) Purpose and Scope. This Section establishes the criteria and procedures to be used in determining whether an industrial discharger will be granted a compliance extension for the installation of an innovative technology.

(2) Authority. The Director, in consultation with the Administrator, may grant a compliance extension for BAT limitations to a discharger which installs an innovative technology. The innovative technology must produce either a significantly greater effluent reduction than that achieved by the best available technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Director is authorized to grant compliance extensions to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable.

(3) Definitions.

(a) The term "innovative technology" means a production process, a pollution control technique, or a combination of the two which satisfies one of the criteria in R317-8-7.8(4) and which has not been commercially demonstrated in the industry of which the requesting discharger is a part.

(b) The term "potential for industry-wide application" means that an innovative technology can be applied in two or more facilities which are in one or more industrial categories.

(c) The term "significantly greater effluent reduction than BAT" means that the effluent reduction over BAT produced by an innovative technology is significant when compared to the effluent reduction over best practicable control technology currently available (BPT) produced by BAT.

(d) The term "significantly lower cost" means that an innovative technology must produce a significant cost advantage when compared to the technology used to achieve BAT limitations in terms of annual capital costs and annual operation and maintenance expenses over the useful life of the technology.

(4) Request for Compliance Extension. The Director shall grant a compliance extension to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable to a discharger that demonstrates:

(a) That the installation and operation of its proposed innovative technology at its facility will result in a significantly greater effluent reduction than BAT and has the potential for industry-wide application; or

(b) That the installation and operation of its proposed innovative technology at its facility will result in the same effluent reduction as BAT at a significantly lower cost and has the potential for industry-wide application.

(5) Permit conditions. The Director may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable date is granted:

(a) A requirement that the discharger report annually on the installation, operation and maintenance costs of the innovative technology;

(b) Alternative BAT limitations that the discharger must meet as soon as possible and not later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.

(6) Signatories to Request for Compliance Extension.

(a) All requests must be signed in accordance with the provisions of R317-8-3.4.

(b) Any person signing a request under paragraph (a) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(c) A professional engineer shall certify that the estimates by the applicant of the costs for the BAT control equipment and for the innovative technology are made in accordance with good engineering practice and represent, in his judgment, the best information available. The Director may waive the requirements for certification under this subsection if, in his opinion, the cost of such certification is unreasonable when compared to the annual sales of the applicant.

(7) Supplementary Information and Record keeping.

(a) In addition to the information submitted in support of the request, the applicant shall provide the Executive Director, at his or her request, such other information as the Executive Director may reasonably require to assess the performance and cost of the innovative technology.

(b) Applicants shall keep records of all data used to complete the request for a compliance extension for the life of the permit containing the compliance extension.

(8) Procedures.

(a) The procedure for requesting a section 301(k) compliance extension is contained in R317-8-2.8. In addition, notwithstanding R317-8-2.3(3), the Director may accept applications for such extensions after the close of the public comment period on the permit if the applicant can show that information necessary to the development of the innovation was not available at the time the permit was written and that the innovative technology can be installed and operated in time to comply no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable.

R317-8-8. Pretreatment.

8.1 APPLICABILITY

(1) This section applies to the following:

(a) Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;

(b) POTWs which receive wastewater from sources subject to National Pretreatment Standards; and

(c) Any new or existing source subject to National Pretreatment Standards.

(2) National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW.

8.2 DEFINITIONS. The following definitions pertain to indirect dischargers and POTWs subject to pretreatment standards and the UPDES program.

(1) "Approval Authority" means the Director.

(2) "Approved POTW pretreatment program or Program or POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in R317-8-8.8 and 8.9 and which has been approved by the Director in accordance with R317-8-8.10.

(3) "Best Management Practices or BMPs" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to implement the prohibitions listed in R317-8-8.5(1) and (3). BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw materials storage.

(4) "Control Authority" means the POTW if the POTW's submission for its pretreatment program has been approved by the Director in accordance with the requirements in R317-8-8.10 or the Director if the submission has not been approved.

(5) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated by the UPDES program.

(6) "Industrial User" or "User" means a source of indirect discharge.

(7) "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources both:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(b) Therefore is a cause of a violation of any requirement of the POTW's UPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder.

(8) "National Pretreatment Standard, Pretreatment Standard or Standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance

with section 307 (b) and (c) of the CWA, which applies to Industrial Users. This includes prohibitive discharge limits established pursuant to R317-8-8.5.

(9) "New Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after publication of proposed Pretreatment Standards under section 307(c) of the (CWA) which will be applicable to such source, if such standards are thereafter promulgated in accordance with that section. See R317-8-8.3 for provisions applicable to this definition.

(10) "Pass through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the POTW's UPDES permit (including an increase in the magnitude or duration of violation).

(11) "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation of municipal sewage and industrial waste.

(12) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).

(13) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

(14) The term "Publicly Owned Treatment Works" or "POTW" means a treatment works which is owned by State or municipality within the State. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(15) "Significant Industrial User"

(a) Except as provided in R317-8-8.2(16)(b) and (c), the term Significant Industrial User means:

1. All Industrial Users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Parts 405 through 471; and

2. Any other Industrial User that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or designated as such by the Control Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement.

(b) The Control Authority may determine that an Industrial User subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

1. The Industrial User, prior to the Control Authority's finding, has consistently complied with all applicable Categorical Pretreatment Standards and Requirements;

2. The Industrial User annually submits the certification statement required in R317-8-8.11(14) together with any additional information necessary to support the certification statement; and

3. The Industrial User never discharges any untreated concentrated wastewater.

(c) Upon a finding that an Industrial User meeting the criteria in R317-8-8.2(15)(a)2. of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from an Industrial User or POTW, and in accordance with R317-8-8.8(6)(b)12., determine that such Industrial User is not a Significant Industrial User.

(16) "Submission" means

(a) a request by a POTW for approval of a pretreatment program to the Director or

(b) a request by a POTW for authority to revise the discharge limits in Categorical Pretreatment Standards to reflect POTW pollutant removals.

8.3 PROVISIONS APPLICABLE TO DEFINITIONS. The following provisions are applicable to the definition of "New Source" provided that:

(1) The building, structure, facility or installation is constructed at a site at which no other source is located, or

(2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source, or

(3) The production or wastewater generating process of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(4) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of R317-8-8.3(2) or (3) but otherwise alters, replaces, or adds to existing process or production equipment.

(5) construction of a new source as defined has commenced if the owner or operator has:

(a) Begun, or caused to begin as part of a continuous on-site construction program:

1. Any placement, assembly, or installation of facilities or equipment: or

2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment: or

3. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.

8.4 LOCAL LAW. Nothing in this rule is intended to affect any pretreatment requirements, including any standards or prohibitions established by local law as long as the local requirements are not less stringent than any set forth in national pretreatment standards, or any other requirements or prohibitions established by the Director.

8.5 NATIONAL PRETREATMENT STANDARDS: Prohibited Discharges

(1) General Prohibitions. Pollutants introduced into POTWs by a non-domestic source shall not pass through the POTW or interfere with the operation or performance of the works. These general prohibitions and the specific prohibitions in R317-8-8.5(3) apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other National Pretreatment Standards or any national, State or local pretreatment requirements.

(2) Affirmative Defenses. A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in R317-8-8.5(1) and the specific prohibitions in R317-8-8.5(3)(c),(d),(e), and (g) where the User can demonstrate that:

(a) It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

(b)1. A local limit designed to prevent pass through and/or interference, as the case may be, was developed in accordance with R317-8-8.5(4) for each pollutant in the User's discharge that caused pass through or interference, and the User was in compliance with each such local limit directly prior to and during the pass through or interference; or

2. If a local limit designed to prevent pass through and/or interference, as the case may be, has not been developed in accordance with R317-8-8.5(4) for the pollutant(s) that caused the pass through or interference, the User's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the User's prior discharge activity when the POTW was regularly in compliance with the POTW's UPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(3) Specific Prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

(a) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in R315-2-1.

(b) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;

(c) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;

(d) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW:

(e) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40 degrees C (104 degrees F) unless the Director, upon request of the POTW, approves alternate temperature limits.

(f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; and

(h) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(4) When specific limits must be developed by POTW.

(a) POTWs developing POTW pretreatment programs shall develop and enforce specific limits to implement the prohibitions listed in R317-8-8.5(1) and R317-8-8.5(3). Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits;

(b) All other POTWs shall, in cases where pollutants contributed by User(s) result in interference or pass-through, and such violation is likely to recur, develop and enforce specific effluent limits for Industrial User(s), and all other users, as appropriate, which, together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's UPDES permit or sludge use or disposal practices;

(c) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(5) Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with R317-8-8.5(4), such limits shall be deemed pretreatment standards for purposes of 19-5-108 of the Utah Water Quality Act.

(6) State enforcement actions. If, within 30 days after notice of an interference or pass through violation has been sent by the Director to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the Director may take appropriate enforcement action.

(7) POTWs may develop Best Management Practices (BMPs) to implement R317-8-8.5(4)(a) and (b). Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this part and section 307(d) of the CWA

8.6 NATIONAL PRETREATMENT STANDARDS: Categorical Standards

40 CFR 403.6 is incorporated by reference as indicated in R317-8-1.10(4)

(1) In addition to the general prohibitions in R317-8-8.5(1), all indirect dischargers shall comply with national pretreatment standards in 40 CFR Chapter I, Subchapter N. Compliance shall be required within the time specified in the appropriate subpart of Subchapter N.

(2) Industrial Users may request the Director to provide written certification on whether an Industrial User falls within a particular subcategory. The Director will act upon that request in accordance with the procedures in 40 CFR 403.6.

(3) Limitations for Industrial Users will be imposed in accordance with 40 CFR 403.6 (c) - (e).

8.7 REMOVAL CREDITS. POTWs may revise pollutant discharge limits specified in Categorical Pretreatment Standards to reflect removal of pollutants by the POTW. Revisions must be made in accordance with the provisions of 40 CFR 403.7.

8.8 POTW PRETREATMENT PROGRAMS: Development by POTW

(1) POTW required to develop a pretreatment program. Any POTW, or combination of POTWs operated by the same authority, with a total design flow greater than 5 million gallons per day (mgd) and receiving from Industrial Users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall be required to establish a POTW pretreatment program unless the Director exercises the option to assume local responsibility as provided for in R317-8-8.8(6)(b)13. The Director may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if it is found that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of

municipal sludge, or other circumstances so warrant in order to prevent interference or pass through.

(2) Deadline for Program Approval. POTWs identified as being required to develop a POTW pretreatment program under R317-8-8.8(1) shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Director of such identification. The POTW pretreatment program shall meet the criteria set forth in R317-8-8.8(6) and shall be administered by the POTW to ensure compliance by Industrial Users with applicable pretreatment standards and requirements.

(3) Incorporation of Approved Programs in Permits. A POTW may develop an approvable POTW pretreatment program any time before the time limit set forth in R317-8-8.8(2). The POTW's UPDES permit will be modified under R317-8-5.6(3)(g) to incorporate the approved program conditions as enforceable conditions of the permit.

(4) Incorporation of Compliance Schedules in Permits. If the POTW does not have an approved pretreatment program at the time the POTWs existing permit is reissued or modified, the reissued or modified permit will contain the shortest reasonable compliance schedule, not to exceed three years, for the approval of the legal authority, procedures and funding required by paragraph (6) of this subsection.

(5) Cause for Reissuance or Modification of Permits. The Director may modify or revoke and reissue a POTW's permit in order to:

(a) Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an Industrial User or combination of Industrial Users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(b) Coordinate the issuance of a CWA Section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

(c) Incorporate an approved POTW pretreatment program in the POTW permit;

(d) Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(e) Incorporate a modification of the permit approved under R317-8-5.6; or

(f) Incorporate the removal credits established under R317-8-8.7.

(6) Pretreatment Program Requirements: Development and Implementation by POTW. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(a) Legal authority. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts which authorizes or enables the POTW to apply and to enforce the requirements of this section. The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its UPDES permit;

2. Require compliance with applicable pretreatment standards and requirements by Industrial Users;

3. Control, through permit, order or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable pretreatment standards and requirements. In the case of Industrial Users identified as significant under R317-8-8.2(15), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such User. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

a. At the discretion of the POTW:

i. This control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

A. Involve the same or substantially similar types of operations;

B. Discharge the same types of wastes;

C. Require the same effluent limitations;

D. Require the same or similar monitoring; and

E. In the opinion of the POTW, are more appropriately controlled under a general control mechanism than under individual control mechanisms.

ii. To be covered by the general control mechanism, the Significant Industrial User must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with R317-8-8.11(4)(b) for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the POTW has provided written notice to the Significant Industrial User that such a waiver request has been granted in accordance with R317-8-8.11(4)(b). The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific Significant Industrial User meets the criteria in R317-8-8.8(6)(a)3.a.i.A. through E., and a copy of the User's written request for coverage for 3 years after the expiration of the general control mechanism. A POTW may not control a Significant Industrial User through a general control mechanism where the facility is subject to production-based Categorical Pretreatment Standards or Categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for Industrial Users whose limits are based on the combined wastestream formula or Net/Gross calculations (40 CFR 403.6(e) and 40 CFR 403.15).

b. Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:

i. Statement of duration (in no case more than five years);

ii. Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

iii. Effluent limits, including Best Management Practices, based on applicable general pretreatment standards, Categorical Pretreatment Standards, local limits and State and local law;

iv. Self-monitoring, sampling, reporting, notification and record keeping requirements, including identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with R317-8-8.11(4)(b), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards, Categorical Pretreatment Standards, local limits, and State and local law;

v. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines; and

vi. Requirements to control Slug Discharges, if determined by the POTW to be necessary.

4. Require the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable pretreatment standards and requirements; including but not limited to the reports required in R317-8-8.11 of this section;

5. Require the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with pretreatment standards and requirements;

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable pretreatment standards and requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a discharge source or treatment system is located or in which records are required to be kept under R317-8-8.11 of this section to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under Section 19-5-106(4) of the Utah Water Quality Act.

7. Obtain remedies for noncompliance by any Industrial User with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance and shall have authority to seek or assess civil or criminal penalties in at least the amount of $1,000 a day for each violation of pretreatment standards and requirements by Industrial Users. POTWs whose approved pretreatment programs require modification to conform to the requirements of this paragraph shall submit a request for approval of a program modification in accordance with Section R317-8-8.16 by November 16, 1989.

8. Pretreatment requirements enforced through the remedies set forth in R317-8-8.8(6)(a)7. shall include, but not be limited to, the duty to allow or carry out inspection entry or monitoring activities; any rules, regulations or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or R317-8-8. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected Industrial User and opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present a danger to the environment or which threatens to interfere with the operation of the POTW. The Director shall have authority to seek judicial relief for noncompliance by Industrial Users when the POTW has acted to seek such relief but has sought a penalty which the Director finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable State or Federal law and not by this provision, and will comply with the confidentiality requirements set forth in R317-8-3.3.

(b) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

1. Identify and locate all possible Industrial Users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Director upon request;

2. Identify the character and volume of pollutants contributed to the POTW by the Industrial User identified under R317-8-8.8(6)(b)1. This information shall be made available to the Director upon request;

3. Notify Industrial Users identified under R317-8-8.8(6)(b)1. of applicable pretreatment standards and any other applicable requirements. Within 30 days of approval of a list of significant industrial users, notify each Significant Industrial User of its status as such and of all requirements applicable to it as a result of such status.

4. Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the requirements of R317-8-8.11.

5. Randomly sample and analyze the effluent from Industrial Users and conduct surveillance and inspection activities in order to identify, independent of information supplied by Industrial Users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each Significant Industrial User at least once a year except as otherwise specified below:

a. Where the POTW has authorized the Industrial User subject to a Categorical Pretreatment Standard to forego sampling of a pollutant regulated by a Categorical Pretreatment Standard in accordance with R317-8-8.11(4)(c), the POTW must sample for the waived pollutant(s) at least once during the term of the Categorical Industrial User's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the Industrial User's wastewater based on changes that occur in the User's operations, the POTW must immediately begin at least annual effluent monitoring of the User's Discharge and inspection.

b. Where the POTW has determined that an Industrial User meets the criteria for classification as a Non-Significant Categorical Industrial User, the POTW must evaluate, at least once per year, whether an Industrial User continues to meet the criteria in R317-8-8.2(15)(b),

c. In the case of Industrial Users subject to reduced reporting requirements under R317-8-8.11(4)(c), the POTW must randomly sample and analyze the effluent from Industrial Users and conduct inspections at least once every two years. If the Industrial User no longer meets the conditions for reduced reporting in R317-8-8.11(4)(c), the POTW must immediately begin sampling and inspecting the Industrial User at least once a year.

6. Evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits or Permit conditions. The results of such activities shall be available to the Director upon request. Significant Industrial Users are required to notify the POTW immediately of any changes at its facility affecting potential for a slug discharge. Significant Industrial Users must be evaluated within one year of being designated a Significant Industrial User. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

a. Description of discharge practices, including non-routine batch discharges;

b. Description of stored chemicals;

c. Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under R317-8-8.5 with procedures for follow-up written notification within five days;

d. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency

response. The results of these activities shall be made available to the Director upon request;

7. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by R317-8-8.11, or indicated by analysis, inspection, and surveillance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions;

8. Comply with all applicable public participation requirements of State law and rules. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of Industrial Users which, at anytime during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an Industrial User is in significant noncompliance if its violation meets one or more of the following criteria:

a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, for the same pollutant parameter;

b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limit multiplied by the applicable TRC. TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH;

c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under R317-8-8.8(6)(a)8. to halt or prevent such a discharge:

e. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance:

f. Failure to provide within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance; and

h. Any other violation or group of violations, which may include a violation of Best Management Practices, which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

9. Funding. The POTW shall have sufficient resources and qualified personnel to carry out all required authorities and procedures. In some limited circumstances, funding and personnel may be delayed by the Director when the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements and a limited aspect of the program does not need to be implemented immediately.

10. Local Limits. The POTW shall develop local limits as required in section R317-8-8.5(4)(a) or demonstrate that they are not necessary.

11. Enforcement Response Plan. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how the POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum;

a. Describe how the POTW will investigate instances of noncompliance;

b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

c. Identify (by title) the official(s) responsible for each type of response;

d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in R317-8-8.8(6)(a) and (b).

12. List of Industrial Users. The POTW shall prepare a list of its Industrial Users meeting the criteria of R317-8-8.2(15)(a). The list shall identify the criteria in R317-8-8.2(15)(a) applicable to each Industrial User and, for Industrial Users meeting the criteria in R317-8-8.2(15)(a), shall also indicate whether the POTW has made a determination pursuant to R317-8-8.2(15)(b) that such Industrial User should not be considered a Significant Industrial User. This list and any subsequent modifications thereto, shall be submitted to the Director as a nonsubstantial program modification. Discretionary designations or de-designations by the Control Authority shall be deemed to be approved by the Director 90 days after submission of the list or modifications thereto, unless the Director determines that a modification is in fact a substantial modification.

13. State Program in Lieu of POTW Program. Notwithstanding the provision of R317-8-8.8(1), the State may assume responsibility for implementing the POTW pretreatment program requirements set forth in R317-8-8.8(6) in lieu of requiring the POTW to develop a pretreatment program. However, this does not preclude POTW's from independently developing pretreatment programs.

(7) A POTW that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 - (Electronic reporting).

8.9 POTW PRETREATMENT PROGRAMS AND/OR AUTHORIZATION TO REVISE PRETREATMENT STANDARDS: SUBMISSION FOR APPROVAL

(1) Who Approves the Program. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in R317-8-8.9(2)(a),(b),(c) and (d). This description shall be submitted to the Director, who will make a determination on the request for program approval in accordance with the procedure described in R317-8-8.10.

(2) Contents of POTW Program Submission.

(a) The program submission shall contain a statement from the city attorney or a city official acting in comparable capacity or the attorney for those POTWs which have independent legal counsel, that the POTW has authority adequate to carry out the programs described in R317-8-8.8. This statement shall:

1. Identify the provision of the legal authority under R317-8-8.8(6)(a) which provides the basis for each procedure under R317-8-8.8(6)(b);

2. Identify the manner in which the POTW will implement the program requirements set forth in R317-8-8.8 including the means by which pretreatment standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, etc.); and

3. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by Industrial Users.

(b) The program submission shall contain a copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement

reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved.

(c) The program submission shall contain a brief description, including organization charts, of the POTW organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program the responsible agencies should be identified, their respective responsibilities delineated and their procedures for coordination set forth.

(d) The program submission shall contain a description of the funding levels and full and part time manpower available to implement the program.

(3) Conditional POTW Program Approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements of R317-8-8.9(2) of this subsection except that the requirements of this section may be relaxed if the submission demonstrates that:

(a) A limited aspect of the program does not need to be implemented immediately;

(b) The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

(c) Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Director will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

(4) Content of Removal Credit Submission. The request for authority to revise Categorical Pretreatment Standards shall contain the information required in 40 CFR 403.7(d).

(5) Approval Authority Action. A POTW requesting POTW pretreatment program approval shall submit to the Director three copies of the submission described in R317-8-8.9(2), and if appropriate R317-8-8.9(4). Within 60 days after receiving a submission, the Director shall make a preliminary determination of whether the submission meets the requirements of this section. Upon a preliminary determination that the submission meets the requirements of this section, the Director will:

(a) Notify the POTW that the submission has been received and is under review; and

(b) Commence the public notice and evaluation activities set forth in R317-8-8.10.

(6) Notification Where Submission is Defective. If, after review of the submission as provided for in paragraph (5) above, the Director determines that the submission does not comply with the requirements of R317-8-8.9(2), (3) and, if appropriate, (4), the Director will provide notice in writing to the applying POTW and each person who has requested individual notice. This notification will identify any defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of R317-8-8.9(2), (3) and, if appropriate, (4).

(7) Consistency With Water Quality Management Plans.

(a) In order to be approved, the POTW pretreatment program shall be consistent with any approved water quality management plan, when the plan includes management agency designations and addresses pretreatment in a manner consistent with R317-8-8. In order to assure such consistency, the Director will solicit the review and comment of the appropriate water quality planning agency during the public comment period provided for in R317-8-8.10(2)(a)2. prior to approval or disapproval of the program.

(b) Where no plan has been approved or when a plan has been approved but lacks management agency designations and/or does not address pretreatment in a manner consistent with this section, the Director will solicit the review and comment of the appropriate 208 planning agency.

8.10 APPROVAL PROCEDURES FOR POTW PRETREATMENT PROGRAMS AND POTW GRANTING OF REMOVAL CREDITS. The following procedure will be adopted in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization.

(1) Deadline for Review of Submission. The Director will have 90 days from the date of public notice of a submission complying with the requirements of R317-8-8.9(2), and where removal credit authorization is sought with the requirements of 40 CFR 403.7(e) and R317-8-8.9(4) to review the submission. The Director shall review the submission to determine compliance with the requirements of R317-8-8.8(2) and (6), and where removal credit is sought, with R317-8-8.7. The Director may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in R317-8-8.10(2)(a)2. is extended beyond thirty (30) days or if a public hearing is held as provided for in R317-8-8.10(2)(b). In no event, however, will the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission meeting the requirements of R317-8-8.9(2) and, in the case of a removal credit application 403.7(e) and R317-8-8.9(2).

(2) Public Notice and Opportunity for Public Hearing. Upon receipt of a submission the Director will commence his review. Within 20 days after making a determination that a submission meets the requirements of R317-8-8.9(2), and when a removal credit authorization is sought under 40 CFR 403.7(d) and R317-8-8.7 the Director will:

(a) Issue a public notice of request for approval of the submission:

1. This public notice will be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice will include: mailing notices of the request for approval of the submission to designated CWA section 208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies (unless such agencies have asked not to be sent the notices); and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.

2. The public notice will provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the submission;

3. All written comments submitted during the 30-day comment period will be retained by the Director and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the Director.

(b) The Director will also provide an opportunity for the applicant, any affected State, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

1. This request for public hearing shall be filed within the thirty (30) day or extended comment period described in R317-8-8.10(2)(a)2. of this subsection and will indicate the interest of the person filing such a request and the reasons why a hearing is warranted.

2. The Director will hold a public hearing if the POTW so

requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt will be resolved in favor of holding the hearing.

3. Public notice of a public hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and right to participate will be published in the same newspaper as the notice of the original request. In addition, notice of the hearing will be sent to those persons requesting individual notice.

(3) Director Decision. At the end of the thirty (30) day or extended comment period and within the ninety (90) day or extended period provided for in R317-8-8.10(1) of this section, the Director will approve or deny the submission based upon the evaluation in R317-8-8.10(1) and taking into consideration comments submitted during the comment period and the record of the public hearing, the Director will so notify the POTW and each person who has requested individual notice. If the Approval Authority makes a determination to deny the request, the Approval Authority shall so notify the POTW and each person who has requested individual notice. This notification will include suggested modification and the Director may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(4) EPA Objection to Director's Decision. No POTW pretreatment program or authorization to grant removal allowances will be approved by the Director if following the thirty (30)-day or extended evaluation period provided for in R317-8-8.10(2)(a)2. and any public hearing held pursuant to this section, the Regional Administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the Regional Administrator's objections will be provided to the applicant and to each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and many convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(5) Notice of Decision. The Director will notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the Director will cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request was published. The Director will identify any authorization to modify Categorical Pretreatment Standards which the POTW may make for removal of pollutants subject to the pretreatment standards.

(6) Public Access to Submission. The Director will ensure that the submission and any comments on the submission are available to the public for inspection and copying.

8.11 REPORTING REQUIREMENTS FOR POTWS AND INDUSTRIAL USERS

(1) Reporting Requirement for Industrial Users Upon Effective Date of Categorical Pretreatment Standards Baseline Report. Within 180 days after the effective date of a Categorical Pretreatment Standards or 180 days after the final administrative decision made upon a category determination submission under R317-8-8.6, whichever is later, existing Industrial Users subject to such Categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (a) through (g) of this Section. Where reports containing this information have already been submitted to the Director, the Industrial User will not be required to submit this information again. At least 90 days prior to commencement of discharge, new sources and sources that become Industrial Users subsequent to promulgation of an applicable Categorical Standards, shall be required to submit to the Control Authority a report which contains the information listed in R317-8-8.11(1)(a)through (e). New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in R317-8-8.11(1)(d) and (e).

(a) Identifying Information. The User shall submit the name and address of the facility, including the name of the operator and owners.

(b) Permits. The User shall submit a list of any environmental control permits held by or for the facility.

(c) Description of Operations. The User shall submit a brief description of the nature, average rate of production and Standard Industrial Classification of the operation carried out by the Industrial User. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated process.

(d) Flow measurement. The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following: regulated process streams and other streams as necessary to allow use of the combined wastestream formula (see Section 40 CFR 403.6(e)). The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(e) Measurement of pollutants.

1. The User shall identify the pretreatment standards applicable to each regulated process.

2. The User shall submit the results of sampling and analysis identifying the nature and concentration, or mass, of regulated pollutants in the discharge from each regulated process when required by the standard or the Control Authority. Both daily maximum and average concentration or mass, where required shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable standards to determine compliance with the Standard;

3. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of R317-8-8.11.

4. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula in order to evaluate compliance with the pretreatment standards. When an alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula this adjusted limit along with supporting data shall be submitted to the Control Authority.

5. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. When 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or when the Administrator determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

6. The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

7. The baseline report shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(f) Certification. The User shall submit a statement, reviewed by an authorized representative of the Industrial User and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the Industrial User to meet the pretreatment standards and requirements.

(g) Compliance Schedule. If additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, the Industrial User shall submit the shortest schedule by which the Industrial User will provide such additional pretreatment and/or operation and maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

1. When the Industrial User's Categorical Pretreatment Standards has been modified by a removal allowance under R317-8-8.7, the combined wastestream formula under R317-8-8.6,or by a fundamentally different factors variance under R317-8-8.15 at the time the User submits the report required by R317-8-8.11(1), the information required by R317-8-8.11(1)(f) and (g) shall pertain to the modified limits.

2. If the Categorical Pretreatment Standards is modified by a removal allowance under R317-8-8.7, the combined wastestream formula under R317-8-8.6, or by a fundamentally different factors variance under 40 CFR 403.13 after the User submits the report required by R317-8-8.11(1), any necessary amendments to the information requested by R317-8-8.11(1)(f) and (g) shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.

(2) Compliance Schedule for Meeting Categorical Pretreatment Standards. The following conditions shall apply to the schedule required by R317-8-8.11(1)(g):

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable Categorical Pretreatment Standards e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);

(b) No increment referred to in paragraph (a) of above shall exceed 9 months;

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority;

(3) Report on Compliance with Categorical Pretreatment Standard Deadline. Within 90 days following the date for final compliance with applicable Categorical Pretreatment Standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to pretreatment standards and requirements shall submit to the Control Authority a report containing the information described in R317-8-8.11(1)(d), e), and (f). For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in R317-8-8.6 this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period.

(4) Periodic Reports on Continued Compliance.

(a) Any Industrial User subject to a Categorical Pretreatment Standards (except a Non-Significant Categorical User as defined in R317-8-8.2(15)(b) after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the pretreatment standard or by the Director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such Categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in R317-8-8.11(1)(d) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted.

(b) The Control Authority may authorize the Industrial User subject to a Categorical Pretreatment Standard to forego sampling of a pollutant regulated by a Categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

1. The Control Authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable Categorical Standard and other wise includes no process wastewater.

2. The monitoring waiver is valid only for the duration of the effective period of the Permit or other equivalent individual control mechanism, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.

3. In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

The request for a monitoring waiver must be signed in accordance with paragraph (11) of this section and include the certification statement in 40 CFR 403.6(a)(2)ii. Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

4. Any grant of the monitoring waiver by the Control Authority must be included as a condition in the User's Control mechanism. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Control Authority for 3 years after expiration of the waiver.

5. Upon approval of the monitoring waiver and revision of the User's control mechanism by the Control Authority, the Industrial User must certify on each report with the statement

below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR ..... (specify applicable National Pretreatment Standard part(s)), I certify that, to the best of my knowledge and belief, there has been no increase in the level of .....(list pollutant(s)) in the wastewaters due to the activities at the facility since filing of the last periodic report under R317-8-8.11(4)(a)."

6. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the User's operations, the User must immediately: Comply with the monitoring requirements of paragraph (4)(a) of this section or other more frequent monitoring requirements imposed by the Control Authority; and notify the Control Authority.

7. This provision does not supersede certification processes and requirements established in Categorical Pretreatment Standards, except as otherwise specified in the Categorical Pretreatment Standard.

(c) The Control Authority may reduce the requirement in paragraph (4)(a) of this section to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the Approval Authority, where the Industrial User meets all of the following conditions:

1. The Industrial User's total categorical wastewater flow does not exceed any of the following:

a. 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the Industrial User discharges in batches;

b. 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

c. 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable Categorical Pretreatment Standard for which approved local limits were developed by a POTW in accordance with R317-8-8.5(4) and paragraph (3) of this section;

2. The Industrial User has not been in significant noncompliance, as defined in R317-8-8.8(6)(b)8. for any time in the past two years;

3. The Industrial User does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period pursuant to paragraph (6)(c) of this section;

4. The Industrial User must notify the Control Authority immediately of any changes at its facility causing it to no longer meet conditions of paragraph (4)(c)1. or 2. of this section. Upon notification, the Industrial User must immediately begin complying with the minimum reporting in paragraph (4)(a) of this section; and

5. The Control Authority must retain documentation to support the Control Authority's determination that a specific Industrial User qualifies for reduced reporting requirements under paragraph (4)(c) of this section for a period of 3 years after the expiration of the term of the control mechanism.

(d) For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in R317-8-8.6 the report required by R317-8-8.11(4)(a) shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by R317-8-11(4)(a) shall include the User's actual average production rate for the reporting period.

(5) Notice of Potential Problems Including Slug Loading. All categorical and non-categorical Industrial Users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined in R317-8-8.5.

(6) Monitoring and Analysis to Demonstrate Continued Compliance.

(a) Except in the case of Non-Significant Categorical User, the reports required in R317-8-8.11(1), (3), (4) and (8) shall contain the results of sampling and analysis of the discharge, including the flow, the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification. In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

(b) If sampling performed by an Industrial User indicates a violation, the User shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation. Where the Control Authority has performed the sampling and analysis in lieu of the Industrial User , the Control Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if;

1. The Control Authority performs sampling at the Industrial User at a frequency of at least once per month, or

2. The Control Authority performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Control Authority receives the results of this sampling.

(c) The reports required in this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.

(d) For sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics compounds for

facilities which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by paragraphs (4) and (8) of this section, the Control Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

(e) All analyses shall be performed in accordance with procedures contained in 40 CFR 136 or with any other test procedures approved by the Administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR 136 does not include sampling or analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties and approved by the Administrator.

(f) If an Industrial User subject to the reporting requirement in R317-8-8.11(4) or (8) monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in, R317-8-8.11(6)(e), the results of this monitoring shall be included in the report.

(7) Compliance Schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program.

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program.

(b) No increment referred to in paragraph (a) above shall exceed nine months.

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Director including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Director.

(8) Reporting requirements for Industrial User not subject to Categorical Pretreatment Standards. The Control Authority shall require appropriate reporting from those Industrial Users with discharges that are not subject to Categorical Pretreatment Standards. Significant Noncategorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports shall be based on sampling and analysis performed in the period covered by the report and performed in accordance with the techniques described in 40 CFR 136 and amendments thereto. Where 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Director determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical Industrial User. Where the POTW itself collects all the information required for the report, the noncategorical significant Industrial User will not be required to submit the report.

(9) Annual POTW reports. POTWs with approved pretreatment programs shall provide the Director with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program and at least annually thereafter, and shall include, at a minimum, the following:

(a) An updated list of the POTW's Industrial Users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to Categorical Pretreatment Standards and specify which standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the Categorical Pretreatment Standards. The POTW shall also list the Industrial Users that are subject only to local requirements. The list must also identify Industrial Users subject to Categorical Pretreatment Standards that are subject to reduced reporting requirements under paragraph (4)(c), and identify which Industrial Users are Non-Significant Categorical Industrial Users.

(b) A summary of the status of Industrial User compliance over the reporting period;

(c) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period;

(d) A summary of changes to the POTW's pretreatment program that have not been previously reported to the Approval Authority; and

(e) Any other relevant information requested by the Director.

(10) Notification of changed discharge. All Industrial Users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under R317-8-8.11(14)(d).

(11) Signatory Requirements for Industrial User Reports. The reports required by R317-8-8.11(1), (3) and (4) shall include the certification statement as set forth in 40 CFR and 403.6(a)(2)(ii) and shall be signed as follows;

(a) By a responsible corporate officer if the Industrial User submitting the reports is a corporation. A responsible corporate officer means:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

2. The manager of one or more manufacturing, production, or operation facilities provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the Industrial User submitting the reports is a partnership or sole proprietorship respectively.

(c) By a duly authorized representative of the individual designated in paragraph (a) or (b) above, if;

1. The authorization is made in writing by the individual described in paragraph (a) or (b) above.

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

3. The written authorization is submitted to the Control Authority.

(d) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

(12) Signatory Requirements for POTW Reports. Reports submitted to the Director by the POTW in accordance with R317-8-8.11(7) and (9) shall be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the Pretreatment Program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the Approval Authority prior to or together with the report being submitted.

(13) Provisions Governing Fraud and False Statements. The reports and other documents required to be submitted or maintained by R317-8-8.11(1), (3), (4), (7), (8), (11) and (12) shall be subject to the Utah Water Quality Act as amended and all other State and Federal laws pertaining to fraud and false statements.

(14) Record-Keeping Requirements.

(a) Any Industrial User and POTW subject to the reporting requirements established in this subsection shall maintain records of all information resulting from any monitoring activities required by this section, including documentation associated with Best Management Practices. Such records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

2. The dates and times analyses were performed;

3. Who performed the analyses;

4. The analytical techniques or methods used; and

5. The results of the analyses.

(b) Any Industrial User or POTW subject to these reporting requirements established in this section (including documentation associated with Best Management Practices shall be required to retain for a minimum of 3 years any records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by the Director, and by the POTW in the case of an Industrial User. This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or POTW or when requested by the Director.

(c) A POTW to which reports are submitted by an Industrial User pursuant to R317-8-8.11 shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Director. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the POTW pretreatment program or when requested by the Director.

(d) Notification to POTW by Industrial User.

1. The Industrial User shall notify the Director, the POTW, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which if otherwise disposed of, would be a hazardous waste under R315-2. Such notification must include the name of the hazardous waste as set forth in R315-2, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial Users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under R317-8-8.11(10). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of R317-8-8.11(1), (3), and (4).

2. Dischargers are exempt from the requirements of R317-8-8.11(14)(d) during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in R315-2. Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 R315-2, requires a one-time notification. Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations adopted by EPA or the Utah Solid and Hazardous Waste Board identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of notification made under R317-8-8.11(14)(d), the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(15) Annual certification by Non-Significant Categorical Industrial Users. A facility determined to be a Non-Significant Categorical Industrial User pursuant to R317-8-8.2(15)(b) must annually submit the following certification statement, signed in accordance with the signatory requirements in paragraph (11) of this section. This certification must accompany any alternative report required by the Control Authority:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the Categorical Pretreatment Standards under 40 CFR (state section), I certify that, to the best of my knowledge and belief that during the period from (include start of reporting date) to (include end of reporting date):

The facility described as (include facility name) met the definition of a Non-Significant Categorical Industrial User as described in R317-8-8.2(15)(b), the facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period." This compliance certification is based upon the following information: (include information

required by the control mechanism)

(15) The Control Authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 - (Electronic reporting).

8.12 CONFIDENTIALITY OF INFORMATION. Any information submitted to the Director pursuant to these rules may be claimed as confidential by the person making the submission. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the 40 CFR Part 2. Information and data provided to the Director pursuant to this part which is effluent data shall be available to the public without restriction. All other information which is submitted to the State or POTW shall be available to the public at least to the standards of 40 CFR 2.302.

8.13 NET/GROSS CALCULATION. Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in an Industrial User's intake water in accordance with this section.

(1) Application. Any Industrial User wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the Industrial User, the applicable standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of R317-8-8.13(2) are met.

(2) Criteria

(a) Either:

1. The applicable Categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis, or

2. The Industrial User must demonstrate that the control system it proposes or uses to meet applicable Categorical Pretreatment Standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake water.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS) and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable Categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standard(s) adjusted under this section.

(d) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

8.14 UPSET PROVISION

(1) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of R317-8-8.14(3) are met.

(3) Conditions Necessary for a Demonstration of Upset. An Industrial User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the Industrial User can identify the cause(s) of the upset;

(b) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(c) The Industrial User has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the upset or if this information is provided orally, a written submission within five days:

1. A description of the indirect discharge and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

3. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(4) Burden of Proof. In any enforcement proceeding the Industrial User seeking to establish the occurrence of an upset shall have the burden of proof.

(5) Reviewability of Agency Consideration of Claims of Upset. In the usual exercise of prosecutorial discretion, State enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitutes final agency action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.

(6) User responsibility in case of upset. The Industrial User shall control production or discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

8.15 BYPASS PROVISION

(1) Definitions.

(a) "Bypass" means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.

(b) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not violating applicable pretreatment standards or requirements. An Industrial User may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of R317-8-8.15(3) and (4).

(3) Notice.

(a) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.

(b) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the Control Authority within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the

Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4) Prohibition of bypass.

(a) Bypass is prohibited and the Control Authority may take enforcement action against an Industrial User for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waters, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

3. The Industrial User submitted notices as required under R317-8-8.15(3).

(b) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in R317-8-8.15(4)(a).

8.16 MODIFICATION OF POTW PRETREATMENT PROGRAMS

(1) General. Either the Director or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under Section R317-8-8.10.

(2) Procedures. POTW pretreatment program modifications shall be accomplished as follows:

(a) For substantial modifications, as defined in R317-8-8.16(3):

1. The POTW shall submit to the Director a statement of the basis for the desired modification, a modified program description or such other documents the Director determines to be necessary under the circumstances.

2. The Director shall approve or disapprove the modification based on its regulatory requirements of R317-8-8.8(6) and using the procedures in R317-10(2) through (6), except as provided in paragraphs (2)4. of this section. The modification shall become effective upon approval by the Director.

3. The modification shall be incorporated into the POTW's UPDES permit after approval. The permit will be modified to incorporate the approved modification in accordance with R317-8-5.6(3)(g).

4. The Approval Authority need not publish a notice of decision provided: The notice of request for approval states that the request will be approved if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change.

(b) The POTW shall notify the Director of any other (i.e. non-substantial) modifications to its pretreatment program at least 45 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in R317-8-8.16(2)(a)1. Such non-substantial program modifications shall be deemed to be approved by the Director, unless the Director determines that a modification submitted is in fact a substantial modification, 90 days after the submission of the POTW's statement. Following such "approval" by the Director such modifications shall be incorporated in the POTW's permit in accordance with R317-8-5.6(2)(g). If the Director determines that a modification reported by a POTW is in fact a substantial modification, the Director shall notify the POTW and initiate the procedures in R317-8-8.16(2)(a).

(3) Substantial modifications.

(a) The following are substantial modifications for purposes of this section:

1. Changes to the POTW's legal authorities;

2. Changes to local limits, which result in less stringent local limits;

3. Changes to the POTW's control mechanism;

4. Changes to the POTW's method for implementing Categorical Pretreatment Standards (e.g., incorporation by reference, separate promulgation, etc.):

5. A decrease in the frequency of self-monitoring or reporting required of Industrial Users;

6. A decrease in the frequency of Industrial User inspections or sampling by the POTW;

7. Changes to the POTW's confidentiality procedures;

8. Significant reductions in the POTW's Pretreatment Program resources (including personnel commitments, equipment, and funding levels); and

9. Changes in the POTW's sludge disposal and management practices.

(b) The Director may designate other specific modifications in addition, to those listed in R317-8-8.16(3)(a), as substantial modifications.

(c) A modification that is not included in R317-8-8.16(3)(a) is nonetheless a substantial modification for purposes of this section if the modification:

1. Would have a significant impact on the operation of the POTW's Pretreatment Program;

2. Would result in an increase in pollutant loadings at the POTW; or

3. Would result in less stringent requirements being imposed on Industrial Users of the POTW.

8.17 VARIANCES FROM CATEGORICAL PRETREATMENT STANDARDS FOR FUNDAMENTALLY DIFFERENT FACTORS (FDF). A variance may be granted, using the procedures of 40 CFR 403.13, to an Industrial User if data specific to the User indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue.

40 CFR 403.13 is incorporated into this rule by reference as indicated in R317-8-1.10(6)

R317-8-9. Pesticide Discharge Permit.

9.1 APPLICABILITY.

(1) This section applies to qualified groups of operators who discharge on or near surface waters of the State from the application of (1) biological pesticides or (2) chemical pesticides (hereinafter collectively "pesticides"), when the pesticide application is for one of the following pesticide use patterns:

(a) Mosquito and Other Insect Pests - to control public health/nuisance and other insect pests that may be present on or near standing or flowing surface water. Public health/nuisance and other insect pests in this use category include but are not limited to mosquitoes and black flies.

(b) Weed and Algae Control - to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches and/or irrigation canals.

(c) Aquatic Nuisance Animal Control - to control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks.

(d) Forest Canopy Pest Control - application of a pesticide to a forest canopy to control the population of a pest species

(e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to water.

(2) Qualified Operator Groups. Certain types of entities (operators), engaged in the above pesticide use patterns, will be required to submit a NOI and obtain coverage under a Pesticide General Permit (PGP) as detailed below:

Operator Group 1 - All Operators involved with any discharges to Category 1 (R317-2-12) waters of the State. All operators involved in the discharge of pesticides on or near surface waters of State, which have been determined by the Water Quality Board to be Category 1 waters of the State must submit a NOI to obtain coverage under the PGP. The NOI must detail each area and watershed where a discharge is to occur. Only pesticide applications which are made to restore or maintain water quality or to protect public health or the environment would be covered under the PGP for discharges on or near Category 1 surface waters of the State.

Operator Group 2 - All Government or Quasi-Governmental Agencies or Special Service Districts. All government agency operators (federal, state, county or local agencies and special service districts) involved in the discharge of pesticides under the conditions described above, as a primary purpose or as a significant activity in their operations, must submit a NOI describing each area and watershed where a discharge is to occur to obtain PGP coverage regardless of the size of the area to be treated.

Operator Group 3 - Other Operators. Other operators engaged in the discharge of pesticides for the conditions described above as a primary purpose or as a significant activity in their operations, like private pest control companies, water supply or canal companies or other large operators whose discharges exceed the treatment area thresholds detailed in Table 2 below must apply for a NOI to obtain coverage under the PGP as detailed in Table 1 below.

Operator Group 4 - Operators involved in a "Declared Pest Emergency Situation". All operators that otherwise aren't required to obtain a NOI, but become involved in a "declared pest emergency situation", as defined below, and will exceed any of the treatment area thresholds in Table 2 must submit a NOI to obtain PGP coverage as detailed in Table 1 below.

9.2 DEFINITIONS. The following definitions specifically pertain to aspects of pesticide discharge permitting in the UPDES program and should be used in conjunction with the definitions shown in R317-1-1 and R317-8-1.5.

(1) "Biological Pesticides" (also called biopesticides) means microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). Microbial pesticide means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that (a) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (b) is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaebacteria; or (c) is a parasitically replicating microscopic element, including but not limited to, viruses (40 CFR 158.2100(b)).

(2) "Biochemical pesticide" means a pesticide that (a) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (b) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticide, is equivalent to a naturally-occurring substance that has such a history; and (c) Has a non-toxic mode of action to the target pest(s)(40 CFR 158.2000(a)(1)). Plant-incorporated protectant means a pesticidal substance that is intended to be produced and used in a living plant, or in the production thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or production thereof (40 CFR 174.3).

(3) "Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

(4) "Declared Pest Emergency Situation" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control. This public declaration may be based on a; significant risk to human health; significant economic loss; or significant risk to Endangered species, Threatened species, Beneficial organisms, or, the environment.

(5) "NOI" means "Notice of Intent", the formal document submitted by an operator to the Division of Water Quality (DWQ) to request coverage under the Pesticide General Permit.

(6) "Operator" means any entity involved in the application of a pesticide which may result in a discharge to waters of the State that meets either or both of the following two criteria:

(a) The entity has control over the financing for, or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions or;

(b) The entity has day-to-day control of, or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves).

(7) "surface waters of the State" means waterbodies, waterways, streams, lakes or rivers that contain standing or flowing water at the time of pesticide application.

(8) "Treatment Area" means the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits or may have an environmental impact. In some instances, the treatment area will be larger than the area where pesticides are actually applied.

9.3 ADMINISTRATIVE REQUIREMENTS.

(1) All operators who are included in the use patterns specified in R317-8-9.1, and discharge to active surface waters of the State as a result of the application of a pesticide must be covered by a UPDES permit, beginning October 31, 2011, by submitting a NOI to obtain coverage under the Pesticide General Permit (PGP). In the event that a discharge occurs prior to submitting a NOI, you must comply with all other requirements of the PGP immediately. All operators will automatically be covered under the PGP for the first five-year permit term of October 31, 2011 to October 30, 2016 if they submit a NOI by February 15, 2012. To obtain PGP coverage for the second and all succeeding PGP five-year terms, all operators must submit a NOI prior to the expiration date (October 30) of the PGP every five years. Each NOI submission will secure permit coverage for the full five-year term of the PGP.

(2) New, qualified operators, who require PGP coverage after February 15, 2012 must submit a NOI in accordance with Table 1 below. The NOI will secure PGP coverage for the remainder of the five-year term of the PGP in effect at that time. For continued PGP coverage during the next five-year permit cycle, a new NOI must be submitted before the expiration of the present PGP, as detailed above.

Table 1. Discharge Authorization Date (a/)

Category	NOI Submittal Deadline	Discharge Authorization Date
Operators who know or should have reasonably known, prior to commencement of discharge, that they will exceed an annual treatment area thre-	At least 10 days prior to commencement of discharge	No earlier than 10 days after the complete and accurate NOI is mailed and postmarked.

shold identified in R317-8-9.3 (4).		
Operators who do not know or would have reasonably not known until after commencement of discharge, that they will exceed an annual treatment area threshold identified in R317-8-9.3(4).	At least 10 days prior to exceeding an annual treatment area threshold.	Original authorization terminates when annual treatment area threshhold is exceeded. Operator is reauthorized no earlier than 10 days after complete and accurate NOI is mailed and postmarked.
Operators commencing discharge in response to a declared pest emergency situation.	No later than 30 days after commencement of discharge.	Immediately, for activities conducted in response to a declared pest emergency situation.

a/ In the event that a discharge occurs prior to your submitting a NOI, you must comply with all other requirements of the PGP immediately.

(3) PGP Coverage Termination. PGP coverage may be terminated by non-submission of a NOI at the end of the present PGP five-year term, or by submission of a signed Notice of Termination (NOT) form to the DWQ.

(4) Annual Treatment Area Thresholds.

Table 2. Annual Treatment Area Thresholds

Rule Section	Pesticide Use Class	Annual Threshold
R317-8-9.1(1)(a)	Mosquitoes and Other Insect Pests	6,400 acres of Treatment Area
R317-8-9.1(1)(b)	Weed and Algae Control -In Water -At Water's Edge	 80 acres of treatment area a/ 100 linear miles of treatment area at water's edge b/
R317-8-9.1(1)(c)	Aquatic Nuisance Animal Control -In Water -At Water's Edge	 80 acres of treatment area a/ 100 linear miles of treatment area at water's edge b/
R317-8-9.1(1)(d)	Forest Canopy Pest Control	6,400 acres of treatment area

a/ Calculations should include the area of the applications made to active surface waters of the State at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a ten acre site should be counted as twenty acres of treatment area.

b/ Calculations should include the linear extent of the application made at water's edge adjacent to active surface waters of the State and at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity and each side of a linear water body as a separate activity or area. For example, treating both sides of a ten mile ditch is equal to twenty miles of water treatment area.

(5) All applicators or operators, whether or not falling into the use categories, or required to obtain PGP coverage, or whether or not meeting the minimum annual treatment area thresholds shown in R317-8-9.3(4) must conform to the Technology Based Effluent limitations in the PGP and to all applicable rules and regulations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The permittee is expected to familiarize himself with the PGP and conform to its requirements, if he discharges any pesticides prior to obtaining a NOI. After February 15, 2012 the permittee is authorized to discharge under the terms and conditions of the PGP only with submission of a completed electronic NOI in accordance with Table 1 above.

(6) Based on a review of the NOI or other information, the DWQ may delay authorization to discharge under the PGP or may determine that additional technology-based and/or water quality-based effluent limitations are necessary; or may deny coverage under this PGP and require submission of an application for an individual UPDES permit in accordance with this rule. If the Director determines an individual UPDES permit is required, that permitting process will proceed independently.

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

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

(1) This rule R317-8-10, including the federal regulations incorporated by reference in R317-8-10.1(3), shall be applicable to animal feeding operations and concentrated animal feeding operations in Utah as provided in the rule.

(2) Where any requirements, definitions, or conditions in R317-8-10 conflict with the requirements, definitions, or conditions pertaining to animal feeding operations or concentrated animal feeding operations in other parts of R317-8, the requirements, definitions, and conditions in this R317-8-10 shall govern.

(3) Included in the federal regulations incorporated by reference under R317-8-1.10 are the following federal regulations governing concentrated animal feeding operations, effective as of July 30, 2012, which have been incorporated by reference as specified in R317-8-1.10:

(a) 40 CFR 122.21(i);

(b) 40 CFR 122.23(a), (b)(3), (b)(5), (b)(7), (b)(8), (c), (d)(2), (e) and (h);

(c) 40 CFR 122.28(b)(2);

(d) 40 CFR 122.42(e);

(e) 40 CFR 122.62(a)(17);

(f) 40 CFR 122.63(h);

(g) 40 CFR Part 412.

(4) The following substitutions apply to the federal regulations incorporated by reference:

(a) Substitute "Director of the Division of Water Quality" for all federal regulation references to "Director".

(b) Substitute "UPDES" for all federal regulation references to "NPDES".

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

10.2 Definitions.

"Animal Feeding Operation" (AFO) means a lot or facility (other than aquatic animal production facility) where the following conditions are met:

(a) animals have been, are, or will be stabled, housed, or confined and fed or maintained for a total of forty-five (45) days or more in any 12-month period;

(b) crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility; and

(c) two or more AFOs under common ownership are considered to be a single AFO if they adjoin each other or if they use a common area or system for the storage or disposal of waste.

"Concentrated Animal Feeding Operation" (CAFO) means:

(a) an AFO that is a Large CAFO; or

(b) an AFO that is a Medium CAFO; or

(c) an AFO that is a Small AFO or Medium AFO that is a Designated CAFO.

"Approved Agriculture Environmental Stewardship Program" means a program approved by the Water Quality Board as meeting the substantive standards of this rule and the Utah Water Quality Act, Title 19, Chapter 5.

"Designated CAFO" means an AFO that is designated as a CAFO by the Director according to criteria in 40 CFR 122.23(c) and thereby required to obtain a UPDES permit.

"Discharge" has the same meaning as "Discharge of a Pollutant" in R317-8-1.5 except that, for purposes of this R317-8-10 only, "discharge" shall refer only to the addition of pollutants to surface waters of the state.

"Large CAFO" means an AFO that stables, houses, or confines the type and number of animals that fall within any of these ranges:

(a) Beef, calves, heifers, and/or veal 1,000 or more
(b) Cows (milking and dry) 700 or more
(c) Layers, broilers (wet system) 30,000 or more
(d) Other than layers (dry system) 125,000 or more
(e) Layers (dry system) 82,000 or more
(f) Turkeys 55,000 or more
(g) Swine (55 pounds or more) 2,500 or more
(h) Swine (less than 55 pounds) 10,000 or more
(i) Sheep 10,000 or more
(j) Horses 500 or more
(k) Ducks (dry system) 30,000 or more
(l) Ducks (wet system) 5,000 or more

"Large Weather Event" for purposes of 19-5-105.5(3)(b)(iii) means a single event or a series of precipitation events, including snow, received at an AFO (including a CAFO) during any consecutive thirty day period that:

(a) occurs in a manner that does not allow an AFO or CAFO to appropriately dewater waste storage, treatment or containment structures; and

(b) yields precipitation in an amount greater than the total of:

(i) the area's monthly average precipitation for the period of the precipitation event(s); and

(ii) (A) for a poultry, swine, or veal AFO or CAFO, a 100-year, 24-hour storm event for the area; or

(B) for all other AFOs or CAFOs, a 25-year, 24-hour storm event for the area.

"Medium AFO" means a lot or facility that is an AFO that stables, houses or confines the type and number of animals that fall within any of these ranges:

(a) Beef, calves, heifers, and/or veal 300-999
(b) Cows (milking and dry) 200-699
(c) Layers and/or broilers (wet system) 9,000-29,999
(d) Other than layers (dry system) 37,500-124,999
(e) Layers (dry system) 25,000-81,999
(f) Turkeys 16,500-54,999
(g) Swine (55 pounds or more) 750-2,499
(h) Swine (less than 55 pounds) 3,000-9,999
(i) Sheep 3,000-9,999
(j) Horses 150-499
(k) Ducks (dry system) 10,000-29,999
(l) Ducks (wet system) 1,500-4,999

"Medium CAFO" means an AFO that confines the number of animals to be classified as a Medium AFO, and where the conditions specified in 40 CFR 122.23(b)(6)(ii) are met.

"Reasonable Measures" for purposes of 19-5-105.5(3)(b)(iii) mean the measures described in R317-8-10.9.

"Small AFO" means a lot or facility that is an AFO that stables, houses, or confines the type and number of animals that fall within any of these ranges:

(a) Beef, calves, heifers, and/or veal 1-299
(b) Cows (milking and dry) 1-199
(c) Layers, broilers (wet system) 1-8,999
(d) Other than layers (dry system) 1-37,499
(e) Layers (dry system) 1-24,999
(f) Turkeys 1-16,499
(g) Swine (55 pounds or more) 1-749
(h) Swine (less than 55 pounds) 1-2,999
(i) Sheep 1-2,999
(j) Horses 1-149
(k) Ducks (dry system) 1-9,999
(l) Ducks (wet system) 1-1,499

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

(a) (i) the Small AFO discharges through a man-made ditch, flushing system, or other similar man-made device; or

(ii) the Small AFO discharges into surface waters of the state which waters originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined at the operation; and

(b) the Director has designated the Small AFO as a CAFO according to criteria in 40 CFR 122.23(c).

"Surface Waters of the State" for purposes under R317-8-10 means Waters of the State as defined in R317-8-1(60) that are not ground water, except ground water that has hydrologic connection to surface waters of the state.

"Technical Standards" means the standards that nutrient management plans must meet, as described in R317-8-10.6.

10.3 UPDES Permit Requirement and Prohibition on Discharge Without a Permit.

(1) The following animal feeding operations are required to apply for a UPDES permit:

(a) Large CAFOs that discharge;
(b) Medium CAFOs; and
(c) Designated CAFOs.

(2) CAFOs with land application discharges are subject to the requirements provided in 40 CFR 122.23(e) and 40 CFR 122.42(e).

(3) A Small AFO may only be designated as a CAFO if:

(i) Pollutants are discharged from the Small AFO into surface waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

(ii) Pollutants from the Small AFO are discharged directly into surface waters of the state which waters originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(4) No AFO or CAFO shall discharge except as authorized under a current UPDES permit.

10.4 Timing of UPDES Permit Application.

(1) An animal feeding operation that has an operational change that results in a requirement to obtain a UPDES CAFO permit shall submit an application no later than 90 days after the time a facility has conditions that require CAFO permit coverage.

(2) No later than 180 days before the expiration of a permit, or as provided by the Director, a permitted CAFO must submit an application to renew its permit in accordance with 40 CFR 122.21(d) unless the CAFO will not discharge upon expiration of the permit.

(3) For facilities in operation prior to April 14, 2003 that have an operational change where the facility becomes a Large CAFO that discharges, or a Medium or Designated CAFO, must seek to obtain UPDES permit coverage no later than 90 days after the time a facility has conditions that require CAFO permit coverage.

(4) New source CAFOs that require CAFO permit coverage and CAFOs constructed after April 14, 2003 that require CAFO permit coverage must seek to obtain UPDES CAFO permit coverage no later than 180 days prior to the time a facility commences operation with the conditions that require CAFO permit coverage.

(5) A CAFO that is required to obtain an individual permit or that is a Designated CAFO, shall apply for a permit within 60 days of notification of permit requirement by the Director, unless otherwise determined by the Director.

10.5 UPDES CAFO Permit Application Requirements.

In order to apply for a UPDES CAFO permit, an AFO or CAFO shall submit to the Director an application containing the information specified in 40 CFR 122.21(i). Application forms

may be obtained from the Division of Water Quality. If the applicant is seeking coverage under a general permit, it shall submit a notice of intent and nutrient management plan to the Director, along with any information required under the general permit. If the Director has not issued a general permit for which the AFO or CAFO is eligible, the owner or operator must submit an application, including a nutrient management plan, for an individual permit to the Director.

10.6 Technical Standards.

(1) The requirements of the Utah Natural Resources Conservation Service (Utah NRCS) Practice Standard 590, Nutrient Management, dated January 2013, are hereby incorporated by reference as the Technical Standards, for purposes of this rule and 40 CFR 412.4(c)(2). Implementation of these standards at a facility requires evaluation on a field-specific basis.

10.7 Nutrient Management Plans.

(1) An AFO or CAFO with a UPDES permit, and as provided in R317-8-10.9, shall have a facility-specific nutrient management plan (NMP). On a field-specific basis, NMPs for permitted facilities shall comply with the requirements and standards specified in:

(a) R317-8-10;

(b) Applicable federal regulations incorporated by reference in R317-8-1.10 and also specified in R317-8-10.1;

(c) The requirements of 40 CFR 122.42(e)(1)(i) through (viii) and the practices and protocols that are required to be identified in those provisions;

(d) Technical Standards in R317-8-10.6; and

(e) nutrient management plan requirements in the UPDES permit.

(2) An NMP for permitted facilities shall be approved by an NRCS certified planner.

10.8 Requirement to Comply with a Permit.

In addition to the requirements of this rule, a UPDES CAFO Permittee shall comply with all permit requirements.

10.9 Reasonable Measures for Large Weather Events.

(1) As provided in 19-5-105.5(3)(b)(iii), no penalty shall apply with respect to an agriculture discharge resulting from a large weather event if the agriculture producer has taken reasonable measures to prevent an agriculture discharge.

(2) An AFO or CAFO will be considered to have taken reasonable measures, for purposes of 19-5-105.5(3)(b)(iii), if it has obtained and is in compliance with a UPDES CAFO permit.

(3) A CAFO that is not required to obtain a UPDES permit and that has experienced an agriculture discharge from its land application areas resulting from a large weather event, will be considered to have taken reasonable measures if:

(a) It has obtained and is in compliance with a site-specific NMP that implements Technical Standards and the requirements of 40 CFR 122.42(e)(1)(vi) through (viii), and the practices and protocols identified under those provisions;

(b) It has kept records adequate to demonstrate that it has met the requirements in paragraph (3), and has provided copies of those records to the Director upon request; and

(c) It has provided one-time notification to the Division that it has implemented reasonable measures under this part 10.9.

(4) An AFO that is not a CAFO will be considered to have taken reasonable measures if it has obtained and is in compliance with a permit by rule. An AFO will be permitted by rule if:

(a) (i) It has obtained and is in compliance with a site-specific NMP that implements Technical Standards and the requirements of 40 CFR 122.42(e)(1)(i) through (viii), and the practices and protocols identified under those provisions; or

(ii) It has received and is in compliance with the requirements of a Certificate of Environmental Stewardship under an Approved Agriculture Environmental Stewardship Program; and

(b) It keeps records adequate to demonstrate that it has met the requirements in this paragraph (4) and has, upon request, made those records available for review by the Director or the Director's representative; and

(c) (i) For a facility permitted by rule under 10.9(4)(a)(i), the facility has provided to the Director a notice of intent to be covered by this permit by rule provision and has confirmed that it is meeting the requirements of paragraphs (4)(a) and (b); or

(ii) For a facility permitted by rule under 10.9(4)(a)(ii), the facility has provided to the Director a copy of the Certificate of Environmental Stewardship issued by the Utah Conservation Commission.

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40 CFR 503

R331. Financial Institutions, Administration.
R331-17. Publication and Disclosure of Acquisition of Control, Merger, or Consolidation Applications to the Department of Financial Institutions.
R331-17-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301, 7-1-703, 7-1-704 and 7-1-705.

(2) This rule applies to all applicants to the department for change of control, acquisition of, merger, or consolidation with any financial institution chartered by the state.

(3) Public disclosure by newspaper publication of applications to the department for change of control is necessary to increase the amount of timely and useful information available to the public thereby increasing the department's sources of information in connection with these applications and enhancing its ability to prevent dishonest or unqualified persons from acquiring control of state chartered financial institutions.

R331-17-2. Definitions.

(1) "Control" means "control" as defined in 7-1-103.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Department" means the Department of Financial Institutions.

R331-17-3. Publication of Notice of Application.

(1) Within ten days after the department has accepted an application for change of control, acquisition of, merger, or consolidation with a financial institution chartered by the state, the applicant shall publish an announcement of such acceptance in three successive issues of a newspaper of general circulation in the county where the principal place of business is established.

(2) The newspaper announcement shall contain:

(a) The name(s) of the proposed acquirer(s);

(b) The name of the financial institution whose stock is sought to be acquired;

(c) Date application was accepted by the department;

(d) A statement that any person wishing to comment on the proposed changes may submit written comments to the commissioner within 20 days following the required newspaper publication.

R331-17-4. Waiver of Publication.

(1) In circumstances requiring prompt action, the commissioner may, if it is in the public interest:

(a) Waive the publication requirement of Rule R331-17-3;

(b) Waive or shorten the public comment period; or

(c) Act on the proposed change in control prior to the expiration of the public comment period.

(2) The commissioner may determine it is in the public interest to grant confidential treatment to an application.

(3) The commissioner may waive publication of notice of an application if notice has been or will be published pursuant to a rule of another state or federal agency.

KEY: financial institutions

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	7-1-301(5)

R331. Financial Institutions, Administration.
R331-23. Lending Limits for Banks, Industrial Loan Corporations.
R331-23-1. Authority, Scope, and Purpose.

(1) The Department of Financial Institutions enacts this rule under authority granted by Sections 7-1-301, 7-3-19, and 7-8-20.

(2) The rule applies to all loans and extensions of credit, including credit exposure to a derivative transaction, made by banks and industrial loan corporations chartered in the state and their subsidiaries.

(3) The rule is intended to prevent one person from borrowing an unduly large amount of a given bank's or industrial loan corporation's funds, thereby exposing the bank's or industrial loan corporation's depositors, creditors and stockholders to excessive risk.

(4) The rule provides exceptions to the general lending limits set forth in Sections 7-3-19 and 7-8-20.

(5) The rule does not apply to loans, extensions of credit and the credit exposure to a derivative transaction made by a bank or an industrial loan corporation to a subsidiary. The rule does not apply to loans, extensions of credit and the credit exposure to a derivative transaction that are subject to, or expressly exempted from, a federal statute or regulation limiting the amount of total loans and credit that may be extended to any person or group of persons.

R331-23-2. Definitions.

(1) "Affiliate" means any institution that controls the bank or industrial loan corporation and any other institution that is controlled by the institution that controls the bank or industrial loan corporation. However, "affiliate" does not include a subsidiary of the bank or industrial loan corporation.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Contractual commitment to advance funds" means:

(a) an obligation on the part of the bank or industrial loan corporation to make payments to a third party contingent upon default by the bank's or industrial loan corporation's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition, or

(b) an obligation to guarantee or stand as surety for the benefit of a third party. The term includes standby letters of credit, guarantees, puts and other similar arrangements. A binding, written commitment to lend is a "contractual commitment to advance funds" if it and all other outstanding loans to the borrower are within the bank's or industrial loan corporation's lending limit on the date of the commitment.

(4) "Consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale.

(5) "Consumer paper" includes paper relating to automobiles, mobile homes, recreational vehicles, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items.

(6) For purposes of the rule, "Control" means the ownership or control of at least 50% of the voting stock.

(7) "Current market value" means the bid or closing price listed for financial instruments in a regularly published listing or an electronic reporting service.

(8) "Credit Exposure to a Derivative Transaction" means the risk to earnings or capital of an obligor's failure to meet the terms of any derivative with the institution or otherwise to perform as agreed. It arises any time institution funds are extended, committed, invested, or otherwise exposed through actual or implied contractual agreements, whether reflected on or off the balance sheet.

(9) "Derivative" means a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(10) "Financial instruments" means stocks, notes, bonds, and debentures traded in a national securities exchange, OTC margin stocks, as defined by the Federal Reserve Board at 12 CFR 220.2, 1996, commercial paper, negotiable certificates of deposit, bankers acceptances, and shares in money market and mutual funds of the type which issue shares in which banks or industrial loan corporations may perfect a security interest.

(11) "Institution" means "institution" as defined in Section 7-1-103.

(12) "Investment grade securities" means marketable obligations in the form of a bond, note or debenture rated in one of the four highest ratings of a nationally recognized rating agency. "Investment grade securities" does not include investments which are predominantly speculative in nature.

(13) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a person. This is made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" includes:

(a) A purchase under repurchase agreement of securities, other assets or obligations other than investment grade securities in which the purchasing bank or industrial loan corporation has a perfected security interest, with regard to the seller but not as an obligation of the underlying obligor of the security;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) A contractual commitment to advance funds;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A participation without recourse, with regard to the participating bank or industrial loan corporation, but not the originating bank or industrial loan corporation;

(f) Existing loans, leases, or advances which have been charged off on the books of the bank or industrial loan corporation in whole or in part and which are legally enforceable, including statutory bad debt under Section 7-3-25 or Section 7-8-15 respectively.

(14) "Loans and extensions of credit" does not include:

(a) A receipt by a bank or industrial loan corporation of a check deposited in or delivered to the bank or industrial loan corporation in the usual course of business unless it results in the carrying of a cash item for the granting of an overdraft other than an inadvertent overdraft in a limited amount that is promptly repaid;

(b) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through a merger or consolidation of financial institutions or a similar transaction by which an institution acquires assets and assumes liabilities of another institution, or foreclosure on collateral or similar proceeding for the protection of the bank or industrial loan corporation, provided that the indebtedness is not held for a period of more than three years from the date of the acquisition, unless permission to extend the period is granted by the commissioner on the basis that holding the indebtedness beyond three years is not detrimental to the safety and soundness of the acquiring bank or industrial loan corporation ;

(c) An endorsement or guarantee for the protection of a bank or industrial loan corporation of any loan or other asset previously acquired by the bank or industrial loan corporation

in good faith or any indebtedness to a bank or industrial loan corporation for the purpose of protecting the bank or industrial loan corporation against loss or of giving financial assistance to it;

(d) Non-interest bearing deposits to the credit of the bank or industrial loan corporation;

(e) The giving of immediate credit to a bank or industrial loan corporation upon uncollected items received in the ordinary course of business;

(f) The purchase of investment grade securities subject to repurchase agreement in which the purchasing bank or industrial loan corporation has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;

(g) The sale of Federal funds;

(h) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.

(15) "Person" means "person" as defined in Section 7-1-103.

(16) "Readily marketable collateral" means financial instruments which are salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or similarly available daily bid and ask price market.

(17) "Sale of Federal Funds" means any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

(18) "Standby letter of credit" means any letter of credit, or similar arrangement however named or described which represents an obligation to the beneficiary on the part of the issuer:

(a) To repay money borrowed by or advanced to or for the account of the account party, or

(b) To make payment on account of any indebtedness undertaken by the account party, or

(c) To make payment on account of any default by the account party in the performance of an obligation.

(19) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(20) "Total capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserves for loan losses, and the portion of subordinated notes and debentures with more than one year maturity remaining.

R331-23-3. General Rule.

(1) The total loans, extensions of credit and the credit exposure to a derivative transaction by a bank or industrial loan corporation to any person outstanding at one time and not fully secured, as determined in a manner consistent with this rule, by collateral having a market value at least equal to the amount of the loan or extension of credit may not exceed 15% of the amount of the bank's or industrial loan corporation's total capital.

(2) The total loans, extensions of credit and the credit exposure to a derivative transaction by a bank or industrial loan corporation to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds and standing may not exceed 10% of the total capital of the bank or industrial loan corporation. This limitation is separate from and in addition to the 15% limitation described in Subsection (1), above.

(a) At all times, the total loans or extensions of credit to a person based on the limitation for banks in Section 7-3-19(2) and for industrial loan corporations in Rule R331-23-3(2) shall be secured by readily marketable collateral having a current market value of at least 100% of the total amount of funds outstanding, excluding accrued or discounted interest.

(b) Each bank or industrial loan corporation shall institute adequate procedures to ensure that the collateral value fully secures the outstanding loan or extension of credit at all times. At a minimum, each bank or industrial loan corporation shall perfect its security interest in the collateral and shall calculate the market value of the collateral at least monthly, or more frequently, as may be deemed necessary to ensure compliance with Section 7-3-19(2) for banks and Rule R331-23-3(2) for industrial loan corporations.

(c) If collateral values fall below 100% of the outstanding loan, the bank or industrial loan corporation must, within 60 days, obtain additional collateral in an amount sufficient to provide 100% coverage, require reduction of the loan or extension of credit, or sell the collateral and liquidate the debt. During this period, the loan or extension of credit will be considered nonconforming.

R331-23-4. Combining Loans to Separate Borrowers - General Rule.

(1) Loans, extensions of credit and derivative transactions to one person will be combined where the proceeds of the loan, extension of credit and derivative transactions are to be used for the direct benefit of any other person or persons.

(2) Loans, extensions of credit and derivative transactions to a general partnership, joint venture or association shall, for purposes of this rule, be considered loans or extensions of credit jointly and severally to each member of such partnership, joint venture or association unless the agreement creating the general partnership, joint venture or association provides otherwise, in which case the loans or extensions of credit shall be allocated to each member only to the extent provided for by the terms of any such agreement.

(3) The sum of all loans, extensions of credit and the credit exposure to a derivative transaction by a bank or industrial loan corporation outstanding at any one time to a person and all of its affiliates may not exceed 50% of the bank's or industrial loan corporation's total capital.

R331-23-5. Exceptions to the Lending Limits.

(1) The lending limits do not apply to the portion of a loan or extension of credit that represents accrued or discounted interest.

(2) Loans Secured by U.S. Obligations and General Obligations of a state or political subdivision.

(a) Loans, extensions of credit and the portion of any credit exposure to a derivative transaction secured by bonds, notes, certificates of indebtedness or Treasury bills of the United States or by other similar obligations fully guaranteed as to the principal and interest by the United States or general obligations of a state or a political subdivision are not subject to any limitation based on total capital.

(b) This exception applies only to the extent that loans, extensions of credit and the portion of any credit exposure to derivative transactions are fully secured by the current market value of obligations of the United States or guaranteed by the United States or general obligations of a state or political subdivision.

(c) If the market value of the collateral declines to the extent that the loan or the credit exposure to a derivative transaction is no longer in conformance with this exception and exceeds the general 15% limitation, the loan or the credit exposure to a derivative transaction must be brought into conformance within 60 days.

(3) Loans to or Guaranteed by a Federal Agency

(a) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any

department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on total capital.

(b) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(c) For purposes of this exception, the commitment or guarantee must be payable in cash or its equivalent within 60 days after demand for payment is made.

(d) A guarantee or commitment is unconditional if the protection afforded the bank or industrial loan corporation is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's or industrial loan corporation's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank or industrial loan corporation.

(4) Loans Secured by Segregated Deposit Accounts

(a) Loans, extensions of credit and the portion of any credit exposure to a derivative transaction secured by a segregated deposit account in the lending bank or industrial loan corporation shall not be subject to any limitation based on total capital.

(b) The bank or industrial loan corporation must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(c) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of a deposit eligible for withdrawal prior to the maturity of the secured loan or derivative transaction, the bank or industrial loan corporation must establish internal procedures which will prevent the release of the security.

(5) Loans to Financial Institutions with the Approval of the commissioner

(a) Loans or extensions of credit to any financial institution or to any receiver, conservator, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the commissioner, shall not be subject to any limitation based on total capital.

(b) This exception is intended to apply only in emergency situations where a bank or industrial loan corporation is called upon to provide assistance to another financial institution.

(6) Discount of Consumer Paper

(a) This exception allows a bank or industrial loan corporation to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to 10% of its total capital (in addition to the 15% permitted by Section 7-3-19(1) and Section 7-8-20(1)) if the paper carries a full recourse endorsement or unconditional guarantee by the person transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank or industrial loan corporation to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(b) Under certain circumstances, consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's or industrial loan corporation's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) any officer designated by the bank's or industrial loan corporation's Chairman or Chief Executive Officer pursuant to authorization by the Board of Directors certifies in writing that the bank or industrial loan corporation is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(7) Loans Secured by Livestock

(a) This exception allows a bank or industrial loan corporation to make loans or extensions of credit to one person in an amount equal to 10% of its total capital, in addition to the 15% permitted by Section 7-3-19(1) and Section 7-8-20(1), if the loans or extensions of credit are secured by livestock having a market value at least equal to 115% of the outstanding loan balance at all times. The loans or extensions of credit may be secured by shipping documents or other instruments which transfer title to, secure title to, or give a first lien on livestock. "Livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry, and fish, whether or not held for resale. To support compliance with this exception, the bank or industrial loan corporation must maintain in its files an inspection and appraisal report on the livestock pledged.

(b) Under the laws of certain states, a person furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If the lien which is based on pasturage furnished by the lienor prior to the making of the loan (i) is assigned to the bank or industrial loan corporation by a recordable instrument and (ii) is protected against being defeated by some other lien or claim, by payment to a person other than the bank or industrial loan corporation, or otherwise, it would qualify under this exception provided the amount of such perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than 115% of the loan. Where the amount due under the grazing contract is dependent upon future performance thereunder, the resulting lien has merely prospective value and does not meet the requirements of the exception.

(8) Loans to Student Loan Marketing Association, Utah Board of Regents or Utah Higher Education Assistance Authority

Loans or extensions of credit to the Student Loan Marketing Association, the Utah Board of Regents or the Utah Higher Education Assistance Authority are not subject to any limitation based on total capital.

(9) Loans to Industrial Development Authorities and Housing Authorities

A loan or extension of credit to an industrial development authority, housing authority or similar public entity in the state is not a loan or extension of credit to the authority provided that:

(a) The bank or industrial loan corporation relies on the credit of the lessee or owner of the facility to be financed by the loan or extension of credit;

(b) The authority's liability with respect to the loan is limited solely to whatever interest it has in the particular facility;

(c) The authority's interest is assigned to the bank or industrial loan corporation as security for the loan or a promissory note from the lessee or owner to the bank or industrial loan corporation provides a higher order of security than the assignment of a lease, trust deed or mortgage; and

(d) lessee's or tenant's rent or mortgage payment is assigned and paid directly to the bank or industrial loan corporation.

A loan or extension of credit meeting the above criteria will be deemed a loan or extension of credit to the lessee or owner and will be combined with other obligations of the lessee or owner for purposes of Section 7-3-19 and Section 7-8-20.

(10) Other Exemptions

With the written approval of the commissioner other exemptions to the provisions of Section 7-3-19 and Section 7-8-20 may be permitted.

R331-23-6. Credit Exposure to Derivative Transactions.

(1) Each bank or industrial loan corporation board of directors shall institute adequate policies and procedures to ensure that derivative positions are established for purposes of mitigating one or more risks inherent in an institution's normal business activities, and not for the purpose of increasing such exposure or for the purposes of speculation in price movement. The policies and procedures shall require the proper identification and prudent limitation of the risks associated with derivatives.

(2) Derivative transactions should be transacted subject to established market terms that provide for prudent counterparty risk mitigation techniques reflected in agreements developed by the International Swap Dealers Association ("ISDA").

(3) Valuation. Each bank or industrial loan corporation shall calculate the exposure to derivative transactions using a consistent method from one of the following:

(a) Internal Model Method.

(i) Credit exposure. The credit exposure of a derivative transaction under the Internal Model Method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

(ii) Calculation of current credit exposure. A bank or industrial loan corporation shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market value is zero or negative, then the current credit exposure is zero.

(iii) Calculation of potential future credit exposure. A bank or industrial loan corporation shall calculate its potential future credit exposure by using an internal model that has been, at least annually, validated by a qualified party independent from the valuation process.

(iv) Net credit exposure. A bank or industrial loan corporation that calculates its credit exposure by using the Internal Model Method pursuant to this paragraph may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

(b) Conversion Factor Matrix Method. The current credit exposure arising from a derivative transaction shall be equal to the product of the notional amount and conversion factor. The conversion factor is determined by asset class and by the maturity of assets: Interest rate, foreign exchange and gold derivatives are valued by multiplying the notional amount by the following multiples based on maturity of the contract: .015 for a maturity of 1 year or less, .03 for a maturity of 1-3 years, .06 for a maturity of 3-5 years, .12 for a maturity of 5-10 years, and .3 for a maturity of over 10 years. Equity derivatives, regardless of maturity will be multiplied by a factor of .2. Other derivatives, including commodities other than gold will be multiplied by: .06 for a maturity of a year or less, .18 for a maturity of 1-3 years, .3 for a maturity of 3-5 years, .6 for a maturity of 5-10 years and 1 for a maturity of over 10 years.

(c) Remaining Maturity Method. The current credit exposure arising from a derivative transaction under the Remaining Maturity Method shall be the greater of zero or the sum of the current mark-to-market value of the derivative transaction added to the product of the notional amount, the remaining maturity in years of the transaction and a fixed multiplicative factor. Like the conversion factor, the fixed multiplicative factor is determined by asset class, but instead of having a fixed value for purposes of the lending limit over the life of a contract, as the maturity diminishes so does the value for purposes of the lending limit. The fixed multiplicative factor for interest rate, foreign exchange and gold derivatives is 1.5%. For equity derivatives and any other derivatives including commodities the fixed multiplicative factor will be 6%.

R331-23-7. Record Keeping.

(1) The board of directors shall review at least annually the most recent financial statements on all loans and extensions of credit, including credit exposure to a derivative transaction, to one person exceeding 10% of total capital. Based upon this review, the board of directors shall approve a determination that the conditions outlined in Rule R331-23-4 do not exist for such loans and extensions of credit. A statement of the above approval shall be incorporated into the minutes of the board of directors meeting at which the review was accomplished.

(2) In the case of loans and extensions of credit subject to the limitations of Section 7-3-19(2) and Rule R331-23-3(2), a record of the market value of the collateral securing such loans or extensions of credit shall be maintained as set forth in Rule R331-23-3.

KEY: loans, banks, industrial loan corporations
December 24, 2012 7-3-19
Notice of Continuation September 28, 2017 7-8-20

R333. Financial Institutions, Banks.
R333-5. Discount Securities Brokerage Service by Banks.
R333-5-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(3)(a) and Section 7-3-3.2.

(2) This rule governs the type of securities brokerage service state chartered banks may offer.

(3) The purpose of this rule is to limit securities activities to "discount brokerage" services and to give state chartered banks competitive equality with national banks which have their principal office in this state by granting the same rights and privileges to state chartered banks as are enjoyed by Utah's national banks.

R333-5-2. Definitions.

"Discount brokerage" means the practice of executing securities transactions solely at the direction of a bank customer but not providing that customer with any investment advice.

R333-5-3. Discount Brokerage Services.

A state chartered bank may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for bank customers and the bank shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The bank clearly acts solely at the customer's direction;

(2) The transactions are for the account of the customer and not the account of the bank;

(3) The transactions are without recourse;

(4) The bank makes no warranty as to the performance or quality of any security;

(5) The bank does not advise customers to make any particular investment;

(6) The bank's promotional material clearly explains the bank's limited role in the service; and

(7) The bank's promotional material clearly explains that the transactions are not federally insured.

KEY: banks and banking, securities
December 2, 1997 7-1-301(3)
Notice of Continuation September 15, 2017 7-3-3.2

R333. Financial Institutions, Banks.
R333-7. Investment by a State-Chartered Bank in Shares of Open-End Investment Companies.
R333-7-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(8)(b)(i) and Section 7-3-3.2.

(2) This rule permits a state-chartered bank to purchase for its own account shares of open-end investment companies subject to certain restrictions.

(3) This rule expands the eligible classes and types of investments for state-chartered banks and gives them rights, privileges and powers granted to national banks.

R333-7-2. Definitions.

(1) "Open-end investment company" is one in which the shares are purchased or sold at par. The fund must be an open-ended investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and Securities Act of 1933 or a privately offered fund sponsored by an affiliated commercial bank.

(2) "Total capital" means the sum of capital stock, surplus, undivided profits, reserves for loan losses, reserve for contingencies, and subordinated notes and debentures with more than one year maturity.

R333-7-3. Investment by a State-Chartered Bank in Shares of Open-End Investment Companies.

(1) A state chartered bank may purchase and hold shares of an open-end investment company which are purchased or sold at par without limitation if the portfolio of the company consists wholly of obligations of, or obligations which are fully guaranteed as to principal and interest by the United States or this state.

(2) A state-chartered bank may invest an amount not to exceed 15% of the bank's total capital in any one money market fund with a Standard and Poor's Money Market Fund Rating of AAAm.

KEY: banks and banking, investments
1995 7-1-301(8)(a)
Notice of Continuation September 5, 2017 7-3-3.2

R333. Financial Institutions, Banks.
R333-8. Authority for Banks to Issue Subordinated Capital Notes or Debentures.
R333-8-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(8) and Section 7-3-28.

(2) This rule applies to all commercial banks chartered by the State of Utah which issue convertible or non-convertible subordinated capital notes or debentures.

(3) The purpose of this rule is to establish the criteria and procedures for issuance of subordinated capital notes or debentures and limitations on the total amount of such instruments which may be outstanding in order to protect the bank's depositors and shareholders.

R333-8-2. Definitions.

(1) "Capital Stock" means the total of:

(a) the par value of all shares of the bank having a par value that have been issued; plus

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except that part of the consideration which has been allocated to capital surplus in a manner permitted by law; plus

(c) the amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise; minus

(d) all reductions from such sum as have been effected in a manner permitted by law.

(2) "Mandatory Convertible Securities" means any capital securities which require that at some future date the issuer must exchange common or perpetual preferred stock for the outstanding security.

(3) "Surplus" means the total of:

(a) the amount paid to the bank in excess of the par value of its capital stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock,

(b) amounts received as capital contributions, and

(c) amounts transferred to the capital surplus account from undivided profits.

R333-8-3. Authority to Issue Capital Notes and Debentures.

(1) Any bank may, with the authorization by resolution of its board of directors, make application to the commissioner for permission to issue mandatory convertible, non-convertible, or optional convertible capital notes or debentures, subordinated to the claims of depositors and other creditors.

(2) The commissioner may grant approval for the issuance of mandatory convertible subordinated capital notes or debentures in such amounts and under such terms and conditions as he shall deem appropriate, provided that:

(a) All relevant provisions of Rule R331-5 have been complied with;

(b) The terms of any issue of mandatory convertible securities must require that all securities be converted to common stock or perpetual preferred stock within ten years of the date of issuance;

(c) The aggregate principal amount of all mandatory convertible securities outstanding at any time, together with the aggregate principal amount of all non-convertible or optional convertible securities outstanding shall not exceed 150% of the sum of the bank's capital stock and surplus accounts;

(d) Mandatory convertible securities may be redeemed prior to maturity only with the proceeds from the sale of common stock or perpetual preferred stock of the bank or bank holding company;

(e) The holder of the security cannot accelerate payment of principal except in the event of bankruptcy, insolvency, or reorganization;

(f) The security must be subordinate in right of payment to all senior indebtedness of the issuer. If the proceeds from the sale of such securities are to be loaned to an affiliate, that loan must be subordinated to the same extent as the original issue;

(g) The bank has a record of sound performance and management; and

(h) The securities shall not be used as collateral for loans or extensions of credit made by the bank.

(3) The commissioner may grant approval for the issuance of non-convertible or optional convertible subordinated capital notes or debentures in such amounts and under such terms and conditions as he shall deem appropriate, provided that:

(a) All relevant provisions and conditions of Department Rule R331-5 have been complied with;

(b) Each issue shall have a weighted average maturity at issuance of not less than seven years;

(c) The aggregate principal amount of all non-convertible and optional convertible securities outstanding at any time, together with the aggregate principal amount of all mandatory convertible securities outstanding shall not exceed 150% of the sum of the bank's capital stock and surplus accounts;

(d) The holder of the security cannot accelerate payment of principal except in the event of bankruptcy, insolvency, or reorganization;

(e) The security must be subordinate in right of payment to all senior indebtedness of the issuer. If the proceeds from the sale of such securities are to be loaned to an affiliate, that loan must be subordinated to the same extent as the original issue;

(f) The bank has a record of sound performance and management and can demonstrate that the bank will be able to generate earnings and cash flows adequate to service the subordinated notes or debentures; and

(g) The subordinated capital notes or debentures shall not be used as collateral for loans or extensions of credit made by the bank.

R333-8-4. Disclosure.

All subordinated capital notes or debentures issued by a bank, whether convertible or not, shall have the following provisions made in the body of the note or debenture and these provisions shall be disclosed in either a bold face type or in a size of type which is larger than the type face used in the other provisions carried in the body of the note or debenture.

(1) This obligation is NOT insured by the Federal Deposit Insurance Corporation.

(2) This obligation is subordinated to the claims of all depositors and other creditors.

(3) Subordinated capital notes or debentures shall not be used as collateral for loans made by the bank.

(4) The disclosure required under subsections (1) and (2) of this section shall be prominently displayed in all advertising of capital notes or debentures.

R333-8-5. Use as Capital.

The outstanding principal amount of all mandatory convertible securities and all subordinated capital notes or debentures not maturing within one year shall be added to the capital of the issuing bank for the purpose of determining the amount of "total capital" under the provisions of Section 7-3-19.

R333-8-6. Exceptions to the Limits on Amounts of Subordinated Capital Notes or Debentures Which May Be Issued.

(1) Notwithstanding the limitation imposed by this rule, subordinated capital notes or debentures assumed under a supervisory action or plan or reorganization pursuant to Sections 7-2-1, 7-2-12 or 7-2-18 may, at the discretion of the commissioner, exceed the maximum limitation imposed by this rule.

(2) Notwithstanding the limitation imposed by this rule, subordinated capital notes or debentures issued to the Federal Deposit Insurance Corporation pursuant to Section 13(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(c), may, at the discretion of the Commissioner, exceed the maximum limitation imposed by this rule.

KEY: banks and banking
1995 7-1-301(8)(e)
Notice of Continuation September 15, 2017 7-3-28

R333. Financial Institutions, Banks.
R333-9. Indemnification of Directors, Officers, and Employees.
R333-9-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(4) and 7-3-13.

(2) This rule defines, clarifies and limits the extent to which a state chartered bank may provide in its articles of incorporation or bylaws for the indemnification of directors, officers and employees under the general corporate powers provision of Sections 16-10a-901 through 16-10a-909.

(3) The purpose of this rule is to deter acts that could threaten the safety and soundness of all state chartered banks by specifically prohibiting the indemnification of directors, officers and employees when a supervisory action results in a final order assessing civil money penalties or requiring affirmative action in the form of payment by an individual to a state chartered bank; to specifically set forth the commissioner's authority to deny or modify an indemnification which appears to be inconsistent with the standards stated in the bank's indemnification article or which would jeopardize the safety and soundness of any state chartered bank; and to specifically prohibit any state chartered bank from insuring any of its directors or employees against a final supervisory order assessing civil money penalties.

R333-9-2. Indemnification of Directors, Officers, and Employees.

(1) A state chartered bank may provide in its articles of incorporation or bylaws for the indemnification of directors, officers and employees for expenses personally incurred in actions to which the directors, officers or employees are parties or potential parties by reason of the performance of their official duties. Indemnification articles which substantially reflect the general provisions of Sections 16-10a-901 through 16-10a-909 are presumed by the department to be within the corporate powers of state chartered banks.

(2) The indemnification provisions shall not allow the indemnification, directly or indirectly, of directors, officers, or employees of a state chartered bank against expenses, penalties or other payments incurred in an administrative proceeding or action instituted by an appropriate bank regulatory agency which proceeding or action results in a final order assessing civil money penalties or requiring affirmative action by an individual or individuals in the form of payments to the bank.

(3) In accordance with his supervisory responsibilities, the commissioner may, in his discretion, review the threat to bank safety and soundness posed by any indemnification or proposed indemnification of directors, officers, or employees of any state chartered bank, or for the consistency of any such indemnification with the standards adopted by that bank in its articles of incorporation or bylaws. Based upon this review, the commissioner may direct a modification of a specific indemnification by a bank through appropriate administrative action.

(4) A state chartered bank may provide in its articles of incorporation or bylaws for the payment of premiums for insurance covering the liability of its directors, officers or employees to the extent that the coverage is provided for in Sections 16-10a-901 through 16-10a-909, except that the provision shall explicitly exclude insurance coverage for a formal supervisory order assessing civil money penalties against a bank director, officer or employee.

KEY: banks and banking
1995 7-1-301(4)
Notice of Continuation September 15, 2017 7-3-13

R333. Financial Institutions, Banks.
R333-10. Securities Activities of Subsidiaries and Affiliates of State-Chartered Banks.
R333-10-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-3-3.2 and 7-3-21.

(2) This rule sets forth standards to govern securities activities of state chartered banks.

(3) The purpose of this rule is to establish safeguards to ensure that subsidiaries or affiliates engaged in securities activities do not endanger the safeness and soundness of state chartered banks.

R333-10-2. Definitions.

(1) "Affiliate" means any company that directly or indirectly, through one or more intermediaries, controls or is under common control with a state chartered bank.

(2) "Bona fide subsidiary" means a subsidiary of a bank that at a minimum:

(a) Is adequately capitalized;

(b) Is physically separate and distinct from the depository operations of the bank;

(c) Does not share a common name or logo with the bank;

(d) Maintains separate accounting and other corporate records;

(e) Shares no common officers or employees with the bank or its holding company;

(f) A majority of its board of directors is composed of persons who are neither directors nor officers of the bank or its holding company;

(g) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank or its holding company nor are otherwise obligations of the bank or its holding company.

(3) "Company" means any corporation, other than a bank, any partnership, business trust, association, joint venture, pool syndicate, or other similar business organization.

(4) "Control" means "control" as defined in Section 7-1-103.

(5) "Extension of credit" means the making or renewal of any loan, a draw upon a line of credit, or an extending of credit in any manner whatsoever and includes:

(a) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) Issuance of a standby letter of credit, or other similar arrangement regardless of name or description;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a natural person or company may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(f) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for

(i) accrued interest or

(ii) taxes, insurance, or other expenses incidental to the existing indebtedness; or

(g) Any other transaction as a result of which a natural person or company becomes obligated to pay money, or its equivalent to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(6) "Investment quality debt security" means a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture, the investment characteristics of which are equivalent to the investment characteristics of such a top-rated obligation.

(7) "Investment quality equity security" means marketable common stock that is ranked or graded in the top four categories or equivalent categories by a nationally recognized rating service, marketable preferred corporate stock that is rated in the top four rating categories by a nationally recognized rating service, or marketable preferred corporate stock that has investment characteristics that are equivalent to the investment characteristics of top rated preferred corporate stock.

(8) "Subsidiary" means any company controlled by a bank.

(9) "Total capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserve for loan losses, and subordinated notes and debentures with more than one year maturity.

R333-10-3. Investment in Securities Activities.

(1) No bank with total capital of less than 7% of its total assets may invest in a securities subsidiary.

(2) No bank may invest more than 10% of its capital in a securities subsidiary.

(3) A bank may not establish or acquire a subsidiary that engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes or other securities; conducts any activities for which the subsidiary is required to register with the Securities and Exchange Commission as a broker-dealer; acts as an investment adviser to any investment company; or engages in any other securities activity unless and except as otherwise provided by (4)(b) of this section, the subsidiary's underwriting activities that would not be authorized to the bank under Section 16 of the Glass-Steagall Act, 12 U.S.C. Sec. 24, Seventh, as made applicable to insured nonmember banks by Section 21 of the Glass-Steagall Act, 12 U.S.C. Sec. 378, are limited to, and therefore continue to be limited to, one or more of the following:

(a) underwriting of investment quality debt securities,

(b) underwriting of investment quality equity securities,

(c) underwriting of investment companies not more than 25% of whose investments consist of investments other than investment quality debt securities and/or investment quality equity securities, or

(d) underwriting of investment companies not more than 25% of whose investments consist of investments other than obligations of the United States or United States Government agencies, repurchase agreements involving such obligations, bank certificates of deposit, banker's acceptances and other bank money instruments, short-term corporate debt instruments, and other similar investments normally associated with a money market fund; and that subsidiary conducts securities activities not authorized to the bank under section 16 of the Glass-Steagall Act, 12 U.S.C. Sec. 24, Seventh, as made applicable to insured nonmember banks by section 21 of the Glass-Steagall Act, 12 U.S.C. Sec. 378.

(4) Subsection (3) of this section not withstanding, a subsidiary of a state-chartered bank may engage in underwriting activities other than as limited thereby provided that the following conditions are met:

(a) The subsidiary is a member in good standing of the National Association of Securities Dealers, "NASD";

(b) The subsidiary has been in continuous operation for the five year period preceding notice to the commissioner as required by this part;

(c) No director, officer, general partner, employee, or 10%

shareholder of any class of voting securities of the subsidiary has been charged within five years of the notice required by this part of any felony or misdemeanor:

(i) involving the making of a false filing with the Securities and Exchange Commission or the Utah Securities Division or the securities agency of another state or

(ii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(d) Neither the subsidiary nor any of its directors, officers, general partners, employees, or 10% shareholders of any class of voting securities of the subsidiary is or has been subject to any state or federal administrative order or court order, judgment, or decree entered within five years of the notice required by this part temporarily or preliminarily enjoining or restraining such person or the subsidiary from engaging in, or continuing, any conduct or practice in connection with the purchase or sale of any security involving the making of a false filing with the Securities and Exchange Commission or the Utah Securities Division or the securities agency of another state or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(e) None of the subsidiary's directors, officers, general partners, employees, or 10% shareholders of any class of voting securities of the subsidiary are or have been subject to an order entered within five years of the notice required by this part issued by:

(i) the Securities and Exchange Commission entered pursuant to Section 15(b) or 15B(c) of the Securities Exchange Act of 1934, 15 U.S.C. 780, 78o-4, or Section 230(c) or (f) of the Investment Advisors Act of 1940, 15 U.S.C. 80b-3(c), or (f);

(ii) the Utah Securities Division entered pursuant to Sections 61-1-1 or 61-1-2; or

(iii) the state securities agency of another state which are similar to Sections 61-1-1 and 61-1-2.

(f) All officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five years experience in similar activities at NASD member securities firms.

R333-10-4. Affiliation With a Securities Company.

A state chartered bank is prohibited from becoming affiliated with any company that directly engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities unless:

(1) The securities business of the affiliate is physically separate and distinct from the bank;

(2) The bank and affiliate share no common officers or employees;

(3) A majority of the board of directors of the bank is composed of persons who are neither directors nor officers of the affiliate;

(4) No employee of the bank conducts securities activities on behalf of the affiliate on the premises of the bank;

(5) The bank and affiliate do not share a common name or logo; and

(6) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank or its holding company nor are otherwise obligations of the bank or its holding company.

R333-10-5. Filing a Notice.

(1) A bank or bank holding company shall notify the Commissioner of Financial Institutions of its intent to acquire or establish a subsidiary that:

(a) sells, distributes or underwrites stocks, bonds, debentures, notes, or other securities;

(b) acts as an investment advisor to any investment company;

(c) conducts any activity for which the subsidiary is required to register with the Securities and Exchange Commission as a broker-dealer; or

(d) engages in any other securities activity.

(2) Notice shall be in writing and must be received by the commissioner at least 60 days prior to the consummation of the acquisition or operation of the subsidiary, whichever is earlier.

(3) The 60-day notice requirement may be waived at the commissioner's discretion where such notice is unpracticable in the case of a purchase and assumption transaction or a supervisory merger.

R333-10-6. Restrictions.

A bank which has a subsidiary or affiliate that engages in the sale, distribution or underwriting of stocks, bonds, debentures, notes, or other securities, or acts as an investment company shall not:

(1) Purchase in its discretion as fiduciary, co-fiduciary, or managing agent any security currently distributed, currently underwritten, or issued by such subsidiary or affiliate or purchase as fiduciary, co-fiduciary, or managing agent any security currently issued by an investment company advised by such subsidiary or affiliate, unless:

(a) The purchase is expressly authorized by the trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure;

(b) The purchase, although not expressly authorized under Subsection (1)(a), is otherwise consistent with the insured nonmember bank's fiduciary obligation, or the purchase is permissible under applicable federal or state statute or rule, or both;

(2) Transact business through its trust department with such subsidiary or affiliate unless the transactions are at least comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank;

(3) Extend credit or make any loan directly or indirectly to any company the stock, bonds, debentures, notes or other securities of which are currently underwritten or distributed by such subsidiary or affiliate of the bank unless the company's stocks, bonds, debentures, notes or other securities that are underwritten or undistributed qualify as investment quality debt securities, or qualify as investment quality equity securities.

(4) Extend credit or make any loan directly or indirectly to any investment company whose shares are currently underwritten or distributed by such subsidiary or affiliate of the bank;

(5) Extend credit or make any loan where the purpose of the extension of credit or loan is to acquire:

(a) Any stock, bond, debenture, note, or other security currently underwritten or distributed by the subsidiary or affiliate;

(b) Any security currently issued by an investment company advised by the subsidiary or affiliate; or

(c) Any stock, bond, debenture, note or other security issued by the subsidiary or affiliate, except that a bank may extend credit or make a loan to employees of the subsidiary or affiliate for the purpose of acquiring securities of the subsidiary or affiliate through an employee stock bonus or stock purchase plan adopted by the board of directors or board of trustees of the subsidiary or affiliate.

(6) Make any loan or extension of credit to a subsidiary or affiliate of the bank that:

(a) Distributes or underwrites stocks, bonds, debentures, notes, or other securities, or

(b) Advises any investment company if the loans or extensions of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and that are not within any exemptions established thereby.

(7) Make any loan or extension of credit to any investment company for which the bank's subsidiary or affiliate acts as an investment adviser if the loan or extension of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and that are not within any exemptions established thereby; and

(8) Directly or indirectly condition any loan or extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's subsidiary or affiliate to underwrite or distribute the company's securities or directly or indirectly condition any loan or extension of credit to any person on the requirement that the person purchase any security currently underwritten or distributed by the bank's subsidiary or affiliate.

R333-10-7. Nonmember Banks Not Authorized to Participate in Securities Activities.

Nothing in this section authorizes an insured nonmember bank to directly engage in any securities activity not authorized to it under Sections 16 and 21 of the Glass-Steagall Act, 12 U.S.C. 24, Seventh and 378.

KEY: banks and banking, securities, subsidiaries
1995 7-3-21
Notice of Continuation September 15, 2017

R333. Financial Institutions, Banks.
R333-12. Investment by State-Chartered Banks in Real Property Other Than Bank Premises.
R333-12-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301 and 7-3-18.

(2) This rule applies to all banks chartered by the State of Utah.

(3) The purpose of this rule is to authorize state-chartered banks with sufficient capital to invest in real property other than bank premises and prescribe requirements and restrictions to govern such activities.

R333-12-2. Definitions.

(1) An "Affiliate" of a bank means any corporation, business trust, association, or other similar organization:

(a) of which the bank, directly or indirectly, owns or controls either a majority of the voting shares or more than 50% of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or

(b) of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of the bank who own or control either a majority of the shares of the bank or more than 50% of the number of shares voted for the election of directors of the bank at the preceding election, or by trustees for the benefit of the shareholders of the bank; or

(c) of which a majority of its directors, trustees, or other persons exercising similar functions are directors of the bank; or

(d) which owns or controls, directly or indirectly, either a majority of the shares of capital stock of the bank or more than 50% of the number of shares voted for the election of directors of the bank at the preceding election, or controls in any manner the election of a majority of the directors of the bank, or for the benefit of whose shareholders or members all or substantially all of the capital stock of the bank is held by trustees.

(2) "Bank premises" means real property recorded as an asset on a bank's books or otherwise held by a bank which is used in the conduct of the bank's business, including leasehold improvements and capital leases of real property. It also includes real property acquired and held for future banking use where the minutes of the board of directors show the bank in good faith intends to utilize such property in the conduct of the bank's business within three years.

(3) "Capital stock" means the sum of

(a) the par value of all shares of the bank having a par value that have been issued,

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and

(c) such amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sums as have been effected in a manner permitted by law.

(4) "Principal stockholder" means a person who owns 5% or more of any class of stock of a bank, any parent, or any affiliate thereof.

(5) "Surplus" means the total of

(a) the amount paid to the bank in excess of the par value of its capital stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock,

(b) amounts received as capital contributions, and

(c) amounts transferred to the capital surplus account from undivided profits.

(6) "Total capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserve for loan losses, and subordinated notes and debentures with more than one year maturity.

R333-12-3. Investment in Real Estate.

(1) A bank, directly or through a subsidiary, may invest an amount not exceeding 10 percent of the bank's capital stock and surplus in real property or in an entity organized to acquire interests in real property, for the purpose of producing income, for inventory and sale, or other development thereof, and may hold, sell, lease, operate, and otherwise exercise the rights it acquires in any such property if:

(a) the bank has total capital equal to at least 8% of its total assets as of the date the investment is made;

(b) no officer, director, employee, principal stockholder or affiliate has any interest in any property or entity in which the bank invests; and

(c) no officer, director, employee, principal stockholder or affiliate receives any compensation for arranging or effecting the investment by the bank.

(2) The limitations established in Subsection (1) do not apply to real property which the bank may acquire and hold:

(a) in satisfaction of debts previously contracted;

(b) at sales to foreclose liens or other security interests claimed by the bank in the properties acquired; and

(c) current and former bank premises and property originally acquired for future use as bank premises.

KEY: banks and banking, real estate investment
1995 7-1-301
Notice of Continuation September 22, 2017 7-3-18

R335. Financial Institutions, Consumer Credit.
R335-1. Rule Prohibiting Negative Amortizing Wrap Loans.
R335-1-1. Authority, Scope and Purpose.

(1) This amended rule is adopted pursuant to Section 70C-8-102(1)(e).

(2) This rule shall apply to all extensions of credit subject to Title 70C, Utah Consumer Credit Code.

(3) The purpose for this rule is to prohibit wrap loans that will not fully service all obligations wrapped by the loan.

R335-1-2. Definitions.

"Wrap loan" means an extension of credit that includes an agreement by the lender to service all or part of the balance due on other debts owed by the borrower out of payments made on the wrap loan.

R335-1-3. Rule Prohibiting Negative Wrap Loans.

All wrap loans subject to Title 70C shall provide for a minimum monthly payment sufficient to pay at least the monthly interest on the wrap loan and the total monthly payment, including interest, principal, escrow or reserve payments, or both, on all obligations wrapped by the loan.

KEY: financial institutions
1995 70C-8-102(1)(e)
Notice of Continuation September 20, 2017

R335. Financial Institutions, Consumer Credit.
R335-2. Rule Prescribing Allowable Terms and Disclosure Requirements for Variable and Adjustable Interest Rates in Consumer Credit Contracts.
R335-2-1. Authority, Scope, and Purpose.

(1) This rule is adopted pursuant to Section 70C-8-102(1)(e).

(2) This rule shall apply to all credit transactions subject to the provisions of Title 70C, Utah Consumer Credit Code.

(3) The purpose for this rule is

(a) to distinguish variable or adjustable interest rates from other kinds of rate formulas or provisions, such as a demand note or a unilateral right to change terms,

(b) to specify what must be included in rate formulas represented to be variable or adjustable, and

(c) to specify certain disclosure requirements under state and federal law applicable to variable or adjustable rate and other formulas.

R335-2-2. Definition.

For purposes of this rule, "variable or adjustable rate" shall refer to any interest rate or finance charge in a consumer credit agreement which varies or fluctuates in accordance with a specified index, whether or not any variation is subject to a minimum or maximum change, or both, or a floor or ceiling rate, or both.

R335-2-3. Permissible Indexes.

(1) Any index may be used in a variable or adjustable rate formula if:

(a) it references a rate or value completely beyond the lender's control, or

(b) it is based entirely on the lender's weighted cost of funds, or

(c) it is a rate used by the lender as a basis for setting the rate on most of its non-consumer loans, provided that at least half the lender's total credit outstanding is not consumer credit during the entire period the rate is an index for any variable or adjustable rate consumer loan; and

(2) All information pertinent to setting or calculating the rate is readily available to the borrower during the entire term of the credit agreement.

R335-2-4. Initial Disclosure Requirements.

Except for an internal index as described in Rule R335-2-3 above, if any index is derived or calculated from two or more rates or values, or both, each rate or value, or both, must be specifically disclosed in the original credit agreement, together with the method to be used for calculating the index, and thereafter each calculation of the index must be made in the manner disclosed utilizing each rate or value, or both, described. This section shall not prevent a change of any term of a variable or adjustable rate formula in an open-end consumer credit contract in accordance with Section 70C-4-102.

R335-2-5. Subsequent Disclosure Requirements.

(1) Any change in the applicable rate resulting from a change in the numerical value of an index need not be disclosed in advance of the change.

(2) Each regular statement of account shall state the rate or weighted average of rates applicable to the account during the period covered by the statement; otherwise, it will not be necessary to give notice of any change in the applicable rate or describe the amount of any change.

R335-2-6. Specific Adjustment Schedule Required.

Any credit agreement containing a variable or adjustable rate must include a schedule stating when the rate will be adjusted and must require adjustment of the rate in accordance with that schedule.

KEY: financial institutions
1995 70C-8-102(1)(e)
Notice of Continuation September 20, 2017

R335. Financial Institutions, Consumer Credit.
R335-4. Notice Concerning Refund of Unearned Credit Insurance Premiums Upon Prepayment of a Consumer Debt.
R335-4-1. Authority, Scope and Purpose.

(1) This rule is adopted pursuant to Section 70C-8-102(1)(e).

(2) This rule shall apply to all credit transactions subject to Title 70C, Utah Consumer Credit Code.

(3) The purpose for this rule is to require all consumer creditors, including assignees or other successors in interest, to notify a borrower when a debtor may be entitled to a separate refund of unearned credit insurance premiums.

R335-4-2. Notice Concerning Separate Refund of Unearned Credit Insurance Premiums Required.

If a debtor becomes entitled to a refund of premiums paid for credit insurance, as defined in Section 70C-6-102, that terminates prior to the end of the term for which it was written, and if the debtor does not receive a refund or credit of the unearned insurance premiums at the time of prepayment or termination, the party receiving the final payment or to whom the obligation was last owed shall promptly notify the debtor of the right to a separate refund of the unearned insurance premiums. The notice shall also state the name and address of each party who should be contacted about obtaining the refund if known to the party providing the notice.

KEY: financial institutions
1995 70C-8-102(1)(e)
Notice of Continuation September 20, 2017

R337. Financial Institutions, Credit Unions.
R337-2. Conversion from a Federal to a State-Chartered Credit Union.
R337-2-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301 and 7-1-706, and Subsection 7-1-713(4).

(2) This rule applies to federally chartered credit union converting to a state chartered credit union.

(3) This rule establishes the requirements and procedures for converting from a federally chartered credit union to a state chartered credit union.

R337-2-2. Definitions.

(1) "Applicant" means the federally chartered credit union converting to a credit union charter issued by the state.

(2) "Commissioner" means the Commissioner of Financial Institutions.

(3) "Federally chartered credit union" means a credit union organized under the laws of the United States.

(4) "State chartered credit union" means a credit union chartered by the state of Utah.

R337-2-3. Conversion Application.

(1) The applicant must file an application on a form acceptable to the department.

(2) As part of the application the following documents or information must be provided:

(a) Year to date financial statements for the most recent month end:

(b) Delinquent loan schedule annotated to reflect collection problems as of the most recent month end;

(c) Explanation and appropriate documents relative to any changes in insurance of member accounts;

(d) Resolution of the board of directors approving the proposed conversion;

(e) Sample of the Notice of Special Meeting of the Members;

(f) Sample of the ballot to be sent to members; and

(g) Approval of the conversion from the National Credit Union Administration.

R337-2-4. Conversion Procedure.

(1) The procedure set forth in Section 7-1-706 shall be followed.

(2) The effective date of the conversion will be the date on which the commissioner issued an order approving the conversion. If a later effective date is desired, the credit union board of directors must request that effective date as part of the application.

KEY: credit unions
November 3, 1997 7-1-713(4)
Notice of Continuation September 5, 2017

R337. Financial Institutions, Credit Unions.
R337-5. Allowance for Loan and Lease Losses - Credit Unions.
R337-5-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-9-29.

(2) This rule applies to all state-chartered credit unions.

(3) This rule requires the allowance account for loan and lease losses (ALLL) be maintained in accordance with Generally Accepted Accounting Principles (GAAP).

R337-5-2. Definitions.

(1) "Adjusted Loss" means the historical loss adjusted for economic or other factors.

(2) "Historical Loss" means the ratio of loan losses (actual losses less recoveries) to the average total loans outstanding for the period.

(3) "Homogeneous Loan Pools" means groups of loans sharing common risk factors.

(4) "In process of collection" means collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status in the near future.

(5) "Well secured" means a debt that is secured by:

(a) collateral with sufficient realizable value to discharge the debt in full, including accrued interest; or

(b) the guarantee of a financially responsible party.

R337-5-3. Allowance Account for Loan and Lease Losses.

(1) Each credit union is required to establish and maintain a methodology to determine the amount needed in an allowance account for loan and lease losses in accordance with GAAP. The account should be shown on the books as a contra-asset account, not an equity account. In determining the appropriate allowance account balance, each credit union shall:

(a) Separate the loan portfolio into homogeneous loan pools based upon common risk factors;

(b) Calculate the net loss percentage of each pool, using the historical loss or adjusted loss method, and apply that percentage to all loans in that pool;

(c) Individually classify loans with unique characteristics; and

(d) Add the resulting amounts to determine the amount needed in the ALLL.

(2) At least annually, the method used by the credit union to determine the ALLL must be validated by a qualified party independent from the estimation process.

(3) Sufficient documentation must be maintained to support the methodology and allow the ALLL to be validated.

(4) In conjunction with this rule, the credit union's Board of Directors must adopt a policy ensuring that loans are written off in a timely manner. The policy should include as a minimum a requirement that loans be charged off at 180 days past due unless well secured and in the process of collection.

(5) Whenever the allowance account for loan and lease losses is materially less than or greater than collection problem loans or does not fairly represent the estimated losses in the portfolio, an immediate adjustment shall be made for the amount of the deficiency or surplus. Adjustments to the account will be accomplished by debit or credit entries to a "Provision for Loan Losses" expense account in accordance with generally accepted accounting principles.

(6) At the close of each accounting period and prior to the payment of a dividend, a credit union shall make a placement to the regular reserve as required by Section 7-9-30. After the required placement has been made, unless the credit union is under prompt corrective action, a credit union may transfer from the regular reserve to undivided earnings, the amount that has been expended to the provision for loan and lease losses during the same period.

(7) The regular reserve and allowance for loan and lease losses shall not be combined for purposes of calculating the placement to the regular reserve as required by Section 7-9-30.

KEY: credit unions, loans
September 5, 2003 7-9-29
Notice of Continuation September 5, 2017

R337. Financial Institutions, Credit Unions.
R337-7. Discount Securities Brokerage Service by State-Chartered Credit Unions.
R337-7-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(3).

(2) This rule governs the type of securities brokerage service state chartered credit unions may offer.

(3) The purpose of this rule is to allow securities activities limited to "discount brokerage" services by state chartered credit unions, similar to the discount brokerage services allowed state chartered banks and industrial loan corporations.

R337-7-2. Definitions.

(1) "Discount brokerage" means the practice of executing securities transactions solely at the direction of a credit union member but not providing that member with any investment advice.

R337-7-3. Discount Brokerage Services.

A credit union may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for credit union members and the credit union shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The credit union clearly acts solely at the member's direction;

(2) The transactions are for the account of the member and not the account of the credit union;

(3) The transactions are without recourse;

(4) The credit union makes no warranty as to the performance or quality of any security;

(5) The credit union does not advise members to make any particular investment;

(6) The credit union's promotional material clearly explains the credit union's limited role in the service; and

(7) The credit union's promotional material clearly explains that the transactions are not federally insured.

KEY: credit unions
December 2, 1997 7-1-301(3)
Notice of Continuation September 28, 2017

R337. Financial Institutions, Credit Unions.
R337-8. Accounts for Parties Other Than Individual Members in State-Chartered Credit Unions.
R337-8-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(3).

(2) This rule governs accounts and loans to parties other than individuals in state chartered credit unions.

(3) The purpose of the rule is to allow state chartered credit unions to maintain accounts in the name of businesses or entities other than individual members to the same extent as credit unions chartered under the laws of the United States.

R337-8-2. Business and Other Accounts.

A state chartered credit union may open a share, draft, certificate or loan account in the name of a party other than an individual member if all equity owners or, in the case of an association or cooperative, all members of the entity are within the credit union's field of membership as defined in the credit union's bylaws if the bylaws have been approved by the Commissioner of Financial Institutions. Loans to an entity other than an individual member may not exceed the entity's unencumbered shares or deposits, or both.

KEY: credit unions
1995 7-1-301(3)
Notice of Continuation September 28, 2017

R337. Financial Institutions, Credit Unions.
R337-9. Schedule for Retention or Destruction of Records of Credit Unions Under the Jurisdiction of the Department of Financial Institutions.
R337-9-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(7).

(2) This rule establishes a schedule for the retention of records of credit unions.

(3) It is the purpose of this rule to require the maintenance of appropriate types of records, which have a high degree of usefulness and to prescribe the period for which records of each class are retained.

(4) This rule specifically exempts credit unions from the requirements of Rule R331-10.

R337-9-2. Definitions.

Key to abbreviations:
Figures - years
P - permanently

R337-9-3. General Rule.

All credit unions under the jurisdiction of the Department of Financial Institutions shall retain and preserve all records listed in the following schedule for the period indicated for specific type:

TABLE

(1) Accounting and Auditing	
(a) Financial statement	10
(b) Cash received vouchers	7
(c) General ledger	P
(d) General journal/cash records	P
(e) Cash accounts reconciliation journals	7
(2) Administrative	
(a) Bylaws and amendments	P
(b) Certificates/licenses	P
(c) Charters	P
(d) Examination reports	10
(e) Supervisory and outside audits	10
(f) Minutes	10
(3) Surety and Fidelity Bond Time Period After Expiration	10
(4) Member Certificate of Deposits Time Period After Payment	7
(5) Collections (Past Due Accounts)	
(a) Collection files (closed)	7
(b) Schedule of delinquent loans	2
(6) Currency Transactions and Related Material	
(a) Copies of drafts, checks or money orders drawn on the credit union or issued and payable to it	7
(b) Copies of checks, drafts or money orders drawn on the credit union or issued and payable by it	7
(c) Copies of records of each payment or transfer of funds, checks, investment securities or other money instruments of $10,000 or more outside the United States	7
(d) Copies of records of each item of $10,000 or more received from outside the United States	7
(e) Currency Transaction Reports (Form 4789)	7
(f) Deposit slips or credit tickets of all debits over $100,000	7
(g) Exemption statements	7
(h) Exemptions Master List	7
(i) Records of all extensions of credit over $10,000 unless the credit involves mortgage, home equity loans or refinancing	7
(j) Reports of international transportation of monetary instruments (Form 4790)	7
(k) Statements or ledgers showing all account activity	7
(7) Checking/Draft Accounts: Members	
(a) Checks/drafts paid	7
(b) Daily reports of overdrafts time period after overdraft is cleared	1
(c) Deposit tickets	7
(d) Individual members' account history ledgers	P
(e) Signature cards	P
(f) Stop-payment orders time period after issued	1
(g) Undelivered statements/dormant accounts log time period after date of last activity or contact with credit union	7
(h) Disclosures/Notices of check-holds	2
(8) Draft/Checking Accounts Held by Credit Unions	
(a) Certified checks/receipts	7
(b) Checks/drafts (canceled)	7
(c) Check/draft register	7
(d) Expense checks (canceled)	7
(e) Expense check register	7
(f) Expense vouchers or invoices	7
(g) Money orders and register	7
(9) Personnel Information	
(a) Disciplinary action records time period after terminated	7
(b) Earnings record	P
(c) Employee benefit plans	P
(d) Employee information reports	7
(e) Employee applications (not hired)	3
(f) Employee applications (hired) time period after terminated	7
(g) Employment eligibility verification	3
(h) Injury reports time period after report date	5
(i) Personnel files time period after terminated	7
(j) Unemployment compensation	7
(k) Training manuals and records	7
(l) Withholding authorization time period after terminated	8
(10) General Information	
(a) Applications for traveler's checks	7
(b) Change-of-address orders	2
(c) Paid bills, statements and invoices	7
(d) Vault records (except safe deposits)	1
(e) Wire transfer debit and credit entries	7
(f) Safe deposit access/entry tickets time period after entry date	7
(g) Safe keeping receipts	P
(h) Lease and contract	P
(11) Insurance Policy	P
(12) Investments	P
(13) Merged Credit Union Articles and Bylaws	P
(14) Loans	
(a) Loan documentation to directors	7
(b) Business loan documentation time period after account closed	7
(c) Consumer loan documentation time period after payoff	7
(d) Real estate loans documentation time period after payoff	7
(e) Real estate related documents	
(i) HMDA-1	10
(ii) HUD-1	10
(iii) Good faith estimates time period after estimate	2
(15) Share Accounts	
(a) Membership and signature cards	P
(b) Individual share ledgers	P

R337-9-4. Reproductions.

Any credit union subject to this rule may cause records in its custody to be reproduced by the micro-photographic or other equivalent process. Any reproduction shall have the same force and effect as the original and shall be admissible into evidence as if it were the original.

R337-9-5. Consistency With Requirements of Other State or Federal Statute or Rule.

This rule will not preempt any other retention requirement longer than that specified herein imposed by any other state or federal statute or rule.

KEY: financial institutions, credit unions
1995 7-1 -301(7)
Notice of Continuation September 28, 2017

R339. Financial Institutions, Industrial Loan Corporations.
R339-4. Authority for Industrial Loan Corporations to Issue Subordinated Capital Notes or Debentures.
R339-4-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(8) and 7-1-301(13).

(2) This rule applies to all industrial loan corporations.

(3) This rule construes, applies, and elaborates on Department of Financial Institutions Rule R331-5 as it applies to industrial loan corporations in the issuance of subordinated capital notes or debentures.

R339-4-2. Definitions.

(1) "Affiliate" means any company under common control with the industrial loan corporation excluding any subsidiary.

(a) The following shall not be considered to be an affiliate:

(i) Any company engaged solely in holding the premises of the industrial loan corporation with which it is affiliated, and

(ii) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized by Rule R339-6-3(1)(j).

(2) "Capital" means the excess of an industrial loan corporation's assets over its liabilities detailed in the following accounts: capital stock, surplus, and undivided profits. Unpaid stock subscriptions are not part of capital.

(3) "Capital Stock" means the total of:

(a) the par value of all shares of the bank having a par value that have been issued; plus

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except that part of the consideration which has been allocated to capital surplus in a manner permitted by law; plus

(c) the amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise; minus

(d) all reductions from such sum as have been effected in a manner permitted by law.

(4) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(5) "Control" means "control" as defined in Section 7-1-103.

(6) "Commissioner" means the Commissioner of Financial Institutions.

(7) "Department" means the Department of Financial Institutions.

(8) "Institution" means "institution" as defined by Section 7-1-103.

(9) "Parent" means any company which controls the industrial loan corporation.

(10) "Person" means "person" as defined in Section 7-1-103.

(11) "Other evidences of debt" means notes payable, bonds, subordinated capital notes or debentures, maturing within one year, mortgages payable, accrued interest payable, and all other debt obligations, but not including any evidences of debt which involve a full recourse commitment where the department can readily ascertain that the person making the commitment is fully able to honor the same.

(12) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(13) "Surplus" is a capital account which includes the amount received by an industrial loan corporation for its capital stock in excess of the par value of the stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock. Surplus may also include amounts received as capital contributions. Amounts may also be transferred to the industrial loan's surplus account by the board of directors from undivided profits.

(14) "Total Capital" means the sum of capital, reserve for contingencies, reserves for loan losses, and the principal outstanding amount of subordinated capital notes or debentures not maturing within one year.

(15) "Undivided Profits" is a capital account representing the industrial loan corporation's capital in excess of its capital stock and surplus accounts. The amount represented by the undivided profits account may arise from net earnings of the industrial loan corporation or out of capital funds paid into the industrial loan corporation in excess of the capital stock and surplus accounts. Undivided profits may be used to absorb losses of the industrial loan corporation, for payment of cash dividends to stockholders or for transfer into surplus, upon appropriate resolution of the industrial loan's board of directors.

R339-4-3. Authority to Issue Capital Notes or Debentures.

(1) Any industrial loan corporation may, with the approval of the stockholders owning two-thirds of the voting stock of the institution, or without the approval if it is authorized by its articles of incorporation, and if it has demonstrated sound performance and efficient management, apply to the commissioner for permission to issue convertible or non-convertible capital notes or debentures, subordinated to the claims of all certificates of deposit, deposits and savings accounts and all other creditors.

(2) The commissioner may grant approval for the issuance of subordinated capital notes or debentures in the amounts and under the terms and conditions as he shall deem appropriate, provided that:

(a) All relevant provisions and conditions of Rule R331-5 issued by the department have been complied with; and

(b) The principal amount of the subordinated capital notes or debentures outstanding at any time shall not exceed 50% of the capital of the industrial loan corporation; and

(c) The new issue of subordinated capital notes or debentures have a weighted average maturity of not less than seven years; and

(d) Subordinated capital notes or debentures shall not be used as collateral for loans or extensions of credit made by the industrial loan corporation.

R339-4-4. Disclosure.

All subordinated capital notes or debentures issued by an industrial loan corporation shall have the following provisions made in the body of the note or debenture and these provisions shall be disclosed in either a bold face type or in a size of type which is larger than the type face used in the other provisions carried in the body of the note or debenture.

(1) This obligation is NOT insured by any agency of the United States or the state.

(2) This obligation is subordinated to the claims of all certificates of deposit, deposits and savings accounts and all other creditors.

(3) Subordinated capital notes or debentures shall not be used as collateral for loans made by the industrial loan corporation.

(4) Items (1) and (2) listed above shall be prominently disclosed in all advertising of capital notes or debentures.

R339-4-5. Use as Capital.

(1) The outstanding principal amount of subordinated capital notes or debentures not maturing within one year shall be added to the capital of the issuing industrial loan corporation for the purpose of determining the amount of "total capital" under the provisions of Sections 7-8-5(1) and 7-8-14 and Rule R339-6.

R339-4-6. Exception to the Limits on Amounts of

Subordinated Capital Notes or Debentures which May be Issued.

Notwithstanding the limitations of Sections 3 and 5 above, subordinated capital notes or debentures assumed under a supervisory action or plan of reorganization pursuant to Sections 7-2-1 or 7-2-12, may, at the discretion of the commissioner:

(1) Exceed the 50% of capital of the industrial loan corporation limitation imposed by Sections 3(2)(b) above; or

(2) Include the outstanding principal amount of subordinated capital notes or debentures maturing within one year in the capital of the industrial loan corporation for the purpose of determining the amount of "total capital" under the provisions of Section 7-8-14 and Rule R339-6.

KEY: financial institutions
1995 7-1-301(8)(e)
Notice of Continuation September 22, 2017 7-1-301(13)

R339. Financial Institutions, Industrial Loan Corporations.
R339-6. Rule Clarifying Industrial Loan Corporation Investments.
R339-6-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(8), and construes and applies to Sections 7-8-13 and 7-8-14.

(2) This rule applies to industrial loan corporations and thrift institutions.

(3) This rule defines acceptable investments for the funds of an industrial loan corporation and defines and clarifies investments in real estate pursuant to Sections 7-8-13 and 7-8-14.

R339-6-2. Definitions.

(1) "Affiliate" means any company under common control with the industrial loan corporation excluding any subsidiary.

(a) The following shall not be considered to be an affiliate:

(i) Any company engaged solely in holding the premises of the industrial loan corporation with which it is affiliated, and

(ii) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized by Rule 339-6-3(1)(i), below.

(2) "Capital" means the excess of an industrial loan corporation's assets over its liabilities detailed in the following accounts: capital stock, surplus, and undivided profits. Unpaid stock subscriptions are not part of capital.

(3) "Capital Stock" means the total of:

(a) the par value of all shares of the bank having a par value that have been issued; plus

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except that part of the consideration which has been allocated to capital surplus in a manner permitted by law; plus

(c) the amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise; minus

(d) all reductions from such sum as have been effected in a manner permitted by law.

(4) "Commissioner" means the Commissioner of Financial Institutions.

(5) "Contractual commitment to advance funds" means an obligation on the part of the industrial loan corporation to make payments, directly or indirectly, to a designated third party contingent upon a default by the industrial loan's customer in the performance of an obligation under the terms of that customer's contract with the third party or an obligation to guarantee or stand as surety for the benefit of a third party to the extent permitted by law. The term includes standby letters of credit, guarantees, puts and other similar arrangements. Undisbursed loan or lease funds and loan or lease commitments not yet drawn upon are not considered a contractual commitment to advance funds.

(6) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(7) "Control" means "control" as defined in Section 7-1-103.

(8) "Depository institution" means "depository institution" as defined in Section 7-1-103.

(9) "Industrial loan corporation" means "industrial loan corporation" as defined in Section 7-1-103.

(10) "Institution" means institution as defined in Section 7-1-103.

(11) "Investment grade securities" means marketable obligations in the form of a bond, note, debenture or preferred stock rated in one of the four highest ratings of a nationally recognized rating agency; it does not include investments which are predominantly speculative in nature.

(12) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a person. This is made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" includes:

(a) A purchase under repurchase agreement of securities, other assets or obligations other than investment grade securities in which the purchasing industrial loan corporation has a perfected security interest, with regard to the seller but not as an obligation of the underlying obligor of the security;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) A contractual commitment to advance funds;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A participation without recourse, with regard to the participating industrial loan corporation, but not the originating industrial loan corporation;

(f) Existing loans, leases, or advances which have been charged off on the books of the industrial loan corporation in whole or in part and which are legally enforceable, including statutory bad debt under Section 7-3-25 or Section 7-8-15 respectively.

(13) "Loans and extensions of credit" does not include:

(a) A receipt by an industrial loan corporation of a check deposited in or delivered to the industrial loan corporation in the usual course of business unless it results in the carrying of a cash item for the granting of an overdraft other than an inadvertent overdraft in a limited amount that is promptly repaid;

(b) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through a merger or consolidation of financial institutions or a similar transaction by which an institution acquires assets and assumes liabilities of another institution, or foreclosure on collateral or similar proceeding for the protection of the industrial loan corporation, provided that such indebtedness is not held for a period of more than three years from the date of the acquisition, unless permission to extend the period is granted by the commissioner on the basis that holding the indebtedness beyond three years is not detrimental to the safety and soundness of the acquiring industrial loan corporation;

(c) An endorsement or guarantee for the protection of an industrial loan corporation of any loan or other asset previously acquired by the industrial loan corporation in good faith or any indebtedness to an industrial loan corporation for the purpose of protecting the industrial loan corporation against loss or of giving financial assistance to it;

(d) Non-interest bearing deposits to the credit of the industrial loan corporation;

(e) The giving of immediate credit to an industrial loan corporation upon uncollected items received in the ordinary course of business;

(f) The purchase of investment grade securities subject to repurchase agreement in which the purchasing industrial loan corporation has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;

(g) The sale of Federal funds;

(h) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.

(14) "Parent" means any company which controls the industrial loan corporation.

(15) "Person" means "person" as defined in Section 7-1-103.

(16) "Prudent Investments" means any investment not expressly prohibited by law or rule and made in the exercise of judgment and care under the circumstances then prevailing which men of prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(17) "Readily marketable government securities" means obligations in the form of a bond, bill, note or debenture issued or offered by any governmental agency, municipality or board which is rated in one of the four highest ratings of a nationally recognized rating service.

(18) "Real estate" means improved or unimproved real property.

(19) "Standby letter of credit" means any letter of credit, or similar arrangement however named or described which represents an obligation to a designated third party on the part of the issuer:

(a) To repay money borrowed by or advanced to or for the account of the issuer's customer, or

(b) To make payment on account of any indebtedness undertaken by the issuer's customer, or

(c) To make payment on account of any default by the issuer's customer in the performance of an obligation.

(20) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(21) "Surplus" is a capital account which includes the amount received by an industrial loan corporation for its capital stock in excess of the par value of the stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock. Surplus may also include amounts received as capital contributions. Amounts may also be transferred to the industrial loan's surplus account by the board of directors from undivided profits.

(22) "Total Capital" means the sum of capital, reserve for contingencies, reserves for loan losses, and the principal outstanding amount of subordinated capital notes or debentures not maturing within one year.

(23) "Undivided Profits" is a capital account representing the industrial loan corporation's capital in excess of its capital stock and surplus accounts. The amount represented by the undivided profits account may arise from net earnings of the industrial loan corporation or out of capital funds paid into the industrial loan corporation in excess of the capital stock and surplus accounts. Undivided profits may be used to absorb losses of the industrial loan corporation, for payment of cash dividends to stockholders or for transfer into surplus, upon appropriate resolution of the industrial loan corporation's board of directors.

R339-6-3. Acceptable Investments for the Deposits and Other Funds of Industrial Loan Corporations.

(1) In the absence of a statute or rule to the contrary, an industrial loan corporation is unrestricted as to a percentage of its total capital being invested in the following:

(a) Cash, demand, or time deposits in a federally insured depository institution, or in deposits maintained directly with a federal reserve bank;

(b) Obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or this state or any of its political subdivisions;

(c) Any investment grade securities;

(d) Any securities purchased under agreements to resell;

(e) Leases, loans, or extensions of credit, whether unsecured or secured;

(f) Real estate contracts;

(g) Consumer and commercial installment sales contracts and security agreements;

(h) A subsidiary with the prior written approval of the commissioner upon finding that the subsidiary is primarily engaged in activities closely related to banking; or

(i) Such real estate as the industrial loan corporation may purchase at any sale, public or private, or which may be conveyed to the industrial loan corporation in satisfaction of or on account of a debt previously contracted in the conduct of its business upon which it had a mortgage, trust deed, judgment, assignment, lien or other claim as set forth in Rule R331-26.

(j) Any other investment with the prior written approval of the commissioner.

(2) An industrial loan corporation is restricted to 50% of its total capital at any one time being invested in the following:

Premises used in the conduct of the business which include real property and any interest therein, property such as furniture, fixtures, and equipment for use in carrying on its own business and the stock, bonds, debentures, or other obligations of any subsidiary or affiliate having as its exclusive activity the ownership and management of the property or interests.

(a) The amount invested in premises may exceed 50% of total capital upon application and finding by the commissioner that the additional investment is necessary to promote the viability and stability of the industrial loan corporation;

(b) If the use of any of the premises for the conduct of business of the thrift institution is discontinued, the industrial loan corporation shall consider the real property as an investment under the 10% of total capital limitation cited in Section (3) below.

(3) An industrial loan corporation is restricted to 10% of its total capital at any one time being invested in real estate other than real estate used in the premises in the conduct of the business or real estate purchased or conveyed on account of a debt previously contracted. Such limited investment by an industrial loan corporation may include real estate or participation interests in real estate whether in partnership, joint venture or participation interest in the real estate for the purpose of producing income or for inventory and sale or for improvement, including the erection of buildings on the real estate for sale or rental purposes, and the industrial loan corporation may hold, sell, lease, operate or otherwise exercise the rights of any owner of any property.

(4) An industrial loan corporation is restricted to an aggregate of 20% of its total capital at any time being invested in any other "prudent investments" not specifically mentioned above, in Rule R339-6-3(1) through (3); provided however, that the aggregate of investments in any form in any one person made pursuant to this section shall not exceed 10% of total capital.

KEY: financial institutions

February 1, 2011	**7-1-301**
Notice of Continuation September 22, 2017	**7-8-13**
	7-8-14

R339. Financial Institutions, Industrial Loan Corporations.
R339-11. Discount Securities Brokerage Service by Industrial Loan Corporations.
R339-11-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(3).

(2) This rule governs the type of securities brokerage service industrial loan corporations may offer.

(3) The purpose of this rule is to allow securities activities limited to "discount brokerage" services by industrial loan corporations, similar to the discount brokerage services allowed state chartered banks.

R339-11-2. Definitions.

"Discount brokerage" is the practice of executing securities transactions solely at the direction of an industrial loan customer but not providing that customer with any investment advice.

R339-11-3. Discount Brokerage Services.

An industrial loan corporation may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for industrial loan corporation customers and the industrial loan corporation shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The industrial loan corporation clearly acts solely at the customer's direction;

(2) The transactions are for the account of the customer and not the account of the industrial loan corporation;

(3) The transactions are without recourse;

(4) The industrial loan corporation makes no warranty as to the performance or quality of any security;

(5) The industrial loan corporation does not advise customers to make any particular investment;

(6) The industrial loan corporation's promotional material clearly explains the industrial loan corporation's limited role in the service; and

(7) The industrial loan corporation's promotional material clearly explains that the transactions are not federally insured.

KEY: financial institutions
December 2, 1997 7-1-301(3)
Notice of Continuation September 28, 2017

R357. Governor, Economic Development.
R357-11. Technology Commercialization and Innovation Program (TCIP).
R357-11-1. Purpose.

(1) The purpose of the Technology Commercialization and Innovation Act is to catalyze and enhance growth of technologies by encouraging interdisciplinary research activity and targeted areas, facilitating the transition of technologies out of the higher education to enhance job creation, and to support the commercialization of technologies developed by small businesses to enhance job creation.

R357-11-2. Authority.

(1) UCA 63N-3-204(2)(b) requires the office to make rules to regulate the Technology Commercialization Innovation Program ("TCIP") grant structure and awards and to recapture awards when a recipient fails to maintain a presence in Utah for at least five years after the award is made, as set forth in these rules.

R357-11-3. Definitions.

(1) This rule adopts the definitions set forth in 63N-3-203.

(2) "Board" means the Board of Business Development set forth in 63N-1-301.

(3) "Derivative Technology" means: Incremental advance or new of application of an existing technology.

(4) "Developmental Research Phase" means: A phase in which the technology is not beyond a basic concept as determined by the office.

(5) "New technology means" Intellectual property not previously marketed or generated revenue for any entity.

(6) Qualified Pre-screening entity "means" A University's Technology Transfer Office or the USTAR Technology Outreach Innovation Program. This term only applies to University team applicants.

(7) "Service location" means a location where a grant recipient is developing and/or commercializing the new technology in a way that provides economic impact to the state; including but not limited to: job creation, new state revenue, and new local revenue.

(8) Solicitation Cycle Means: A granting cycle from application to grant distribution to be held at least once a year or more depending on availability of funds. All dates for any solicitation may be found on the TCIP website.

(9) "TCIP" means the Technology Commercialization and Innovation Program as defined in Utah Code Section 63N-3-203(6).

R357-11-4. General Grant Requirements.

(1) An applicant can only receive a TCIP award totaling an amount defined in policy per new technology. Policy shall be available on the TCIP website.

(2) An applicant may not submit more than one application in the same solicitation cycle if the applicant has more than one new technology that meets the eligibility requirement for a TCIP grant.

(a) Only one new technology project per applicant will be funded in an solicitation cycle.

(3) An applicant that has generated more than $500,000 in revenue from the proposed new or derivative technology is not eligible for a TCIP grant.

(4) An applicant that has raised more than $3,000,000 in total prior funding, including equity and debt based financing, is not eligible for the TCIP grant.

(5) An Applicant may apply for a TCIP grant up to three times for a specific new technology. If, after the third application TCIP does not fund the technology, TCIP will reject subsequent applicants for the same new technology without further review.

R357-11-5. Matching Funds.

(1) Matching funds may be considered in granting an award if the Office provides notice of such a requirement in the application. If considered a grant recipient must show proof of the matching funds.

(2) Matching funds may be raised and spent at any time prior to submitting an invoice to the TCIP

(a) Grant recipient must submit bank statements (for Licensees) or financial statements (for Universities) demonstrating that the matching funds were available during the match period.

(b) If matching funds have been required by the Office to be a condition precedent to a grant award, matching funds do not have to be in place at the time of the application, but must be in place before TCIP funds are disbursed within the contract period of one year.

R357-11-6. Applicant Specific Requirements.

(1) University Teams: In order to apply for a grant or loan under the TCIP program, a University Team must satisfy the following initial criteria:

(a) The technology must be organized by faculty led university team;

(b) The technology must have completed the developmental research phase; and

(c) The applicant must be pre-screened by a qualified pre-screening entity.

(d) The qualified pre-screening entity must certify that the technology meets the criteria set forth in (a) and (b) of this section, and the certification must be provided before grant is awarded.

(2) Small Businesses: In order to apply for a grant or loan under the TCIP program, a small business must satisfy the following initial criteria:

(a) The applicant must be a "small business" as defined by the Federal Small Business Administration's definition and meet the criteria set forth in UCA Section 63N-3-203(5).

(3) A University-licensee is also be eligible if it meets the definitions in (a) above.

R357-11-7. Review of Applications and Awards.

(1) Applicants who successfully meet the eligibility requirements set forth in R357-11-4 and R357-11-5 and R357-11-6 may submit their application for the TCIP grant through the online registration portal.

(2) The Executive Director of GOED or the director's designee will evaluate the applications received in each solicitation cycle. The Executive Director or the designee may use the following criteria, as defined by the Executive Director or the designee, to evaluate applications for TCIP grants:

(a) Quality, diversity, and number of jobs created in Utah,

(b) Quality of Management and Leadership, including experience with commercialization of new technologies as demonstrated by grant applicant's application and proposal;

(c) Strength of the new technology and potential for commercialization;

(d) Size and Growth of the market of the proposed technology

(e) Applicant's ability to market the technology and the credibility of their "go-to-market" strategy.

(f) Availability of matching funds and the source and relevance of those funds as set forth in R357-11-5

(g) Whether the project combines or coordinates related research at two or more institutions of higher education;

(h) Any other criteria deemed necessary or valuable to the selection process.

(3) Additionally, each applicant's application will be compared against and with the strength of all other applicants' applications and proposals within the same solicitation cycle.

(4) The Executive Director may assemble an outside review team to review the criteria set forth above and to make recommendations regarding the application.

(5) The Executive Director or his designee shall propose funding allocations to the Board.

(6) After the Board provides its advice, the Executive Director or the designee shall determine which applications should be prioritized for funding.

(7) Applications will be prioritized and funded based on the criteria set forth in (1)-(3). Award letters will be provided setting forth the terms of the grant offer.

R357-11-8. Requirements for Grant Recipients.

(1) Contract

(a) An applicant who is awarded a TCIP grant must sign a contract with the State of Utah prior to receiving any funds

(2) Sub-Contracts

(a) Grant Recipients are prohibited from subcontracting with another entity to administer the new technology funded by the Grant.

(3) Time in State

(a) Grant recipients will be expected to retain their company, and supported technology, and exploit the technology in the State of Utah for a minimum period of five years from the date of their agreement with the State.

(b) Any applicant who fails to maintain a manufacturing or service location in the state or who fails to exploit the new technology from a location in the state will be subject to recapture of the grant funding, subject to the provisions of Utah Code Section 63N-3-204(2)(d) and R357-11-8.

(4) Authorization to disclose tax information

(a) Licensee grant recipients will be required to sign an authorization to disclose tax records for up to five years from the date of their agreement with the State.

(5) Mentoring Program

(a) Grant awardees may be required to participate in the TCIP Mentoring Program in order to secure funding.

(b) If a grant award is contingent on participation in the TCIP Mentoring Program, an awardee will be required to show active participation in the program prior to receiving any or part of the grant funding as outlined in recipient's contract.

R357-11-9. Funding.

(1) TCIP funding is for developing existing research to the point of commercialization, bridging the "funding gap" between research dollars and manufacturing dollars.

(2) TCIP funding may be used to:

(a) Purchase equipment;

(b) Purchase supplies;

(c) Fund graduate/undergraduate students for time directly applicable to center commercialization activities related to the new technology;

(d) Fund faculty salaries directly applicable to center commercialization and related to the new technology;

(e) Fund technology transfer activities (trade shows, brochures, etc.);

(f) Fund market analysis;

(g) Pay for consulting fees directly applicable to center commercialization;

(h) Pay for business manager or marketing manager salaries directly applicable to center commercialization activities; or

(i) Other purposes approved by GOED in writing.

(3) Carryover Funds

(a) The budget described in the contract is designated for the particular fiscal year and is an integral part of the contract. Upon the expiration of the contract, residual funds under the contract can only be accessed by amending the contract as described above.

(4) Invoicing Requirement

(a) To receive funds from the program, an invoice should be submitted by the awardee to the program manager upon completion of:

(i) the required milestones contained within the grant award contract;

(ii) an approved mentorship program with completion to be verified by the office; or

(iii) any other requirements contained within the grant award contract.

(b) Every invoice must include:

(i) Contract Number;

(ii) Name of entity and Principal Investigator.;

(iii) Billing Period; and

(iv) Current and Cumulative Amounts.

R357-11-10. Reporting Requirements.

(1) Reporting and Monitoring

(a) Grant awardees or mentor will be required to submit a report of activities, achievements and expenses, etc. as specified in the awardees contract.

(b) Grant awardees or mentor will be required to comply with the State's request for information pertaining to the economic impact to the State, at least annually for up to five years from date of the agreement.

(c) Grant awardees or mentor will also be required to respond to additional periodic reporting to the TCIP Director, Governor's Office of Economic Development and GOED Board, and the Legislature, at any time during the agreement period and thereafter for two additional years.

(d) Universities and Small Businesses should also expect periodic site visits from TCIP Director or board members. Such visits will be scheduled at mutually convenient times.

R357-11-11. Recapture.

(1) In order to receive grant funding under these provisions, an applicant must commit to maintain a manufacturing location or service location in the State of Utah for at least five years from the date that the grant award letter is issued.

(2) Maintaining a manufacturing and service location means that the applicant will perform at least 51% percent of the grant activities listed above in the State of Utah, will exploit the technology into a commercial project in Utah and will maintain working operations in the State for at least five years from the date the grant award letter is issued.

(3) If the applicant fails to maintain a manufacturing a service location in Utah for at least five years from the date the grant award letter is issued, the entire grant amount may be subject to recapture.

(4) A repayment by an applicant shall be prorated based on the number of full years the applicant operated in the state from the date of the awarded grant.

(5) Should an applicant fail to comply with the requirements to maintain a manufacturing and service location in Utah for the purpose of exploiting the new technology that is the subject of the grant, the Office will issue a Notice of Agency Action for Recapture.

(6) The Notice of Agency Action shall contain the grounds for recapture, and the prorated amount of the recapture, if any.

KEY: technology, innovations, commercialization, small businesses

September 26, 2017 63N-3-204(2)

R358. Governor, Economic Development, Consumer Health Services.
R358-1. Electronic Standards for Transmitting Information through the Health Insurance Exchange.
R358-1-1. Purpose and Authority.

(1) The purpose of this rule is to establish electronic standards for data transmission and reception through the Health Insurance Exchange.

(2) This rule is enacted under the authority of Section 63M-1-2506.

R358-1-2. Definitions.

(1) Technology partner. A Health Insurance Exchange technology partner administers the technology on which the Exchange runs and supports the activities that take place on that technology.

(2) Financial partner. A Health Insurance Exchange financial partner administers the financial transactions that occur on the Exchange, including invoicing and collection of payments, and the disbursement of funds for services provided.

(3) Provider partner. A Health Insurance Exchange provider partner is any entity that offers goods or services to consumers through the Exchange system.

R358-1-3. Standards.

(1) The Office of Consumer Health Services requires that all Exchange technology, financial, and provider partners strive to keep consumer data secure at all times. All partners shall:

(a) transmit consumer data between the Exchange and all partners via secure file transfer protocol (SFTP);

(b) keep consumer data encrypted during transmission and while at rest on partner servers; and

(c) establish security profiles to provide leveled access to the minimum allowable data.

R358-1-4. HIPAA Compliance.

(1) The Office of Consumer Health Services requires that all Exchange technology and provider partners comply with the Health Insurance Portability and Accountability Act (HIPAA).

R358-1-5. Quality Control Process.

(1) Because security is integral to Health Insurance Exchange operations, the Office of Consumer Health Services shall:

(a) conduct periodic security audits to ensure the strength of the above standards as performed by all partners; and

(b) perform risk assessments across all partners, technologies, and platforms when implementing new enhancements or services.

KEY: data standards, Health Insurance Exchange, consumer health, health insurance
October 10, 2012 63M-1-2506
Notice of Continuation September 29, 2017

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid; and

(i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or

(ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or

(iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or

(v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or

(vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or

(vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.

(7) "Department" means the Department of Health.

(8) "Director" means the director of the Division.

(9) "Division" means the Division of Health Care Financing within the Department.

(10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

The Department incorporates the July 1, 2017, versions of the following by reference:

(1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual, as applied in Rule R414-70, and the manual's attachment for Donor Human Milk Request Form;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;

(6) Hospice Care Utah Medicaid Provider Manual;

(7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(8) Personal Care Utah Medicaid Provider Manual;

(9) Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual;

(10) Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual;

(11) Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual;

(16) Office of Inspector General Administrative Hearings Procedures Manual;

(17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(18) Coverage and Reimbursement Code Look-up Tool found at http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php;

(19) CHEC Services Utah Medicaid Provider Manual with its attachments;

(20) Chiropractic Medicine Utah Medicaid Provider Manual;

(21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(22) General Attachments (All Providers) for the Utah Medicaid Provider Manual;

(23) Indian Health Utah Medicaid Provider Manual;

(24) Medical Transportation Utah Medicaid Provider Manual;

(25) Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment;

(26) Licensed Nurse Practitioner Utah Medicaid Provider Manual;

(27) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables;

(28) Physician Services Utah Medicaid Provider Manual with its attachments;

(29) Anesthesiology Utah Medicaid Provider Manual;

(30) Podiatric Services Utah Medicaid Provider Manual;

(31) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(32) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(33) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual;

(34) School-Based Skills Development Services Utah Medicaid Provider Manual;

(35) Section I: General Information Utah Medicaid Provider Manual;

(36) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;

(37) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;

(38) Vision Care Services Utah Medicaid Provider Manual;

(39) Medically Complex Children's Waiver Utah Medicaid Provider Manual; and

(40) Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

Certain qualified aliens described in Title IV of Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services as described in Section 1903(v) of the Social Security Act.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Department has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR, Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) The Department conducts hospital utilization review as outlined in the Hospital Services Utah Medicaid Provider Manual in effect at the time service is rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or

(c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider manual, the Department shall deny coverage of the service.

(2) The Department may request records that support

provider claims for payment under programs funded through the Department. These requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the Department will close the record and will evaluate the payment based on the records available.

(3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.

(b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.

(c) Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R410-14.

(d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.

(e) Provider appeals of action for recovery or withholding of money initiated by the Office of Inspector General of Medicaid Services (OIG) shall be governed by the OIG Administrative Hearings Procedures Manual incorporated by reference in Section R414-1-5.

R414-1-15. Medicaid Fraud.

The Department has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the

procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

R414-1-28. Provider-Preventable Conditions.

(1) In accordance with 42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

(a) Rule R380-200;

(b) Rule R380-210;

(c) Rule R386-705;

(d) Rule R428-10; and

(e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

R414-1-29. Medicaid Policy for Reconstructive and Cosmetic Procedures.

(1) Reconstructive or restorative services are medically necessary and performed on abnormal structures of the body to improve and restore bodily function or to correct deformity resulting from disease, trauma, congenital anomaly, or previous therapeutic intervention.

(2) Cosmetic procedures are performed with the primary intent to improve appearance, are not covered services, and include non-medically necessary procedures performed in the same episode as a covered procedure.

(3) Coverage for reconstructive breast procedures related to cancer includes:

(a) reconstruction of the breast on which the procedure is performed; and

(b) reconstruction of the breast on which the procedure is not performed to produce a symmetrical appearance and prostheses.

R414-1-30. Face-to-Face Requirements for Home Health Services.

(1) Orders for home health services and certain durable medical equipment (DME) must be in accordance with 42 CFR 440.70.

(2) DME that requires face-to-face shall be the same as DME items required by Medicare.

(3) No home health agency or DME supplier may report services for reimbursement until they meet the face-to-face requirement.

KEY: Medicaid

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Notice of Continuation February 15, 2017 26-18-3

26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-2A. Inpatient Hospital Services.
R414-2A-1. Introduction and Authority.

This rule defines the scope of inpatient hospital services that are available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.10.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid client for inpatient hospital services.

(2) "Diagnosis Related Group (DRG)" is the CMS-coding that determines reimbursement for the resources that a hospital uses to treat a client with a specific diagnosis or medical need and is further described in Section R414-2A-9 of this rule.

(3) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(4) "Inpatient" is an individual whose severity of illness and intensity of service requires continuous care in a hospital, as noted by InterQual Criteria as noted in Section R414-1-12.

(5) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness, under the direction of a physician or other practitioner of the healing arts.

(6) "Leave of Absence" from an inpatient facility is a patient's absence for therapeutic or rehabilitative purposes where the patient does not return by midnight of the same day.

(7) "Observation" means monitoring a patient to evaluate the patient's condition, symptoms, diagnosis, or appropriateness of inpatient admission.

(8) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(9) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-2A-3. Client Eligibility Requirements.

Inpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-2A-4. Hospital Admission Requirements.

(1) Each hospital providing inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(2) The attending physician or other practitioner of the healing arts must sign a physician acknowledgement statement that meets the requirements of 42 CFR 412.46.

(3) For psychiatric patients, the attending physician must certify and recertify the need for inpatient psychiatric services as described in 42 CFR 441.152.

R414-2A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for inpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-2A-6. Service Coverage.

(1) Inpatient hospital services encompass all medically necessary and therapeutic medical services and supplies that the physician or other practitioner of the healing arts orders that are appropriate for the diagnosis and treatment of a patient's illness. Inpatient hospital care is limited to medical treatment of symptoms that will lead to medical stabilization of the patient. This medical stabilization care is irrespective of any underlying psychiatric diagnosis.

(2) The Department does not pay for physician services rendered by a non-Medicaid provider.

(3) Services performed for a patient by the admitting hospital or by an entity wholly-owned or wholly-operated by the hospital within three days of patient admission, are considered inpatient services. This three-day window applies to diagnostic and non-diagnostic services that are clinically related to the reason for the patient's inpatient admission regardless of whether the inpatient and outpatient diagnoses are the same.

(4) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a client during an inpatient stay are reimbursed as part of payment under the DRG.

(5) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient service as part of payment under the DRG, even if the stay is less than 24 hours.

(6) Services provided to an inpatient that could be provided on an outpatient basis are reimbursed as part of payment under the DRG.

(7) Inpatient hospital psychiatric services are available only to clients not residing in a county covered by a prepaid mental health plan.

R414-2A-7. Limitations.

(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(2) Detoxification for a substance use disorder in a hospital is limited to medical detoxification for acute symptoms of withdrawal when the patient is in danger of experiencing severe or life-threatening withdrawal. The Department does not cover any lesser level of detoxification in an inpatient hospital.

(3) Abortion procedures must first be reviewed and preauthorized by the Department as meeting the requirements of Section 26-18-4 and 42 CFR 441.203.

(4) Sterilization and hysterectomy procedures must first be reviewed and preauthorized by the Department as meeting the requirements of 42 CFR 441, Subpart F.

(5) Organ transplant services are governed by Rule R414-10A, Transplant Services Standards.

(6) Take home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(7) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society.

(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.

(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.

(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment billed on a 1500 form. Payment for physician services provided by providers who are not paid by the hospital is governed by Rule R414-10.

(11) Inpatient rehabilitation services must first be reviewed and preauthorized.

R414-2A-8. Coinsurance.

Each Medicaid client is responsible for a coinsurance payment as established in the Utah State Medicaid Plan and incorporated by reference in Rule R414-1.

R414-2A-9. Reimbursement Methodology.

(1) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The DRG classification scheme assigns each hospital patient to one of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG. The DRG system allows for outliers for those discharges that have significant variance from the norm.

(2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.

(3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.

(4) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, please refer to Section R414-1-12.

(5) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.

(6) If an observation stay meets the intensity and severity for inpatient hospitalization, the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.

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26-18-3.5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-3A. Outpatient Hospital Services.
R414-3A-1. Introduction and Authority.

This rule defines the scope of outpatient hospital services available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.20.

R414-3A-2. Definitions.

(1) "Allowed charges" mean actual charges submitted by the provider less any charges for non-covered services.

(2) "CHEC" means Child Health Evaluation and Care and is the Utah specific term for the federally mandated program of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) for children under the age of 21.

(3) "Clinical Laboratory Improvements Act" (CLIA) is the Centers for Medicare and Medicaid Services (CMS) program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.

(4) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(5) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(6) "Outpatient" is defined in 42 CFR 440.20.

(7) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-3A-3. Client Eligibility Requirements.

Outpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-3A-4. Program Access Requirements.

(1) The Department reimburses for outpatient hospital services and supplies only if they are:

(a) furnished in a hospital;

(b) provided by hospital personnel by or under the direction of a physician or dentist;

(c) provided as evaluation and management of illness or injury under hospital medical staff supervision and according to the written orders of a physician or dentist.

(2) All outpatient hospital services are subject to review by the Department.

R414-3A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for outpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-3A-6. Services.

(1) Services appropriate in the outpatient hospital setting for adequate diagnosis and treatment of a client's illness are limited to less than 24 hours and encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies ordered by a physician or other practitioner of the healing arts.

(2) Outpatient hospital services include:

(a) the service of nurses or other personnel necessary to complete the service and provide patient care during the provision of service;

(b) the use of hospital facilities, equipment, and supplies; and

(c) the technical portion of clinical laboratory and radiology services.

(3) Laboratory services are limited to tests identified by the Centers for Medicare and Medicaid Services (CMS) where the individual laboratory is CLIA certified to provide, bill and receive Medicaid payment.

(4) Cosmetic or reconstructive procedures are set forth in Section R414-1-29.

(5) Abortion procedures are limited to procedures certified as medically necessary, cleared by review of the medical record, approved by division consultants, and determined to meet the requirements of Section 26-18-4 and 42 CFR 441.203.

(6) Sterilization procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F.

(7) Nonphysician psychosocial counseling services are limited to evaluations and may be provided only through a prepaid mental health plan by a licensed clinical psychologist for:

(a) mentally retarded persons;

(b) cases identified through a CHEC/EPSDT screening; or

(c) victims of sexual abuse.

(8) Outpatient individualized observation of a mental health patient to prevent the patient from harming himself or others is not covered.

(9) Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.

(10) Hyperbaric Oxygen Therapy is limited to service in a facility in which the hyberbaric unit is accredited by the Undersea and Hyperbaric Medical Society.

(11) Take home supplies and durable medical equipment are not reimbursable.

(12) Prescriptions are not a covered Medicaid service for a client who is eligible to receive emergency services only.

R414-3A-7. Prior Authorization.

Prior authorization must be obtained on certain medical and surgical procedures in accordance with Section R414-1-14.

R414-3A-8. Copayment Policy.

Each Medicaid client is responsible for a copayment as established in the Utah Medicaid State Plan and incorporated by reference in Rule R414-1.

R414-3A-9. Reimbursement for Services.

Reimbursement for outpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

KEY: Medicaid

July 1, 2017	**26-1-5**
Notice of Continuation September 15, 2017	**26-18-2.3**
	26-18-3(2)
	26-18-4

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-10. Physician Services.
R414-10-1. Introduction and Authority.

(1) The Physician Services Program provides a scope of physician services to meet the basic medical needs of eligible Medicaid members. It encompasses the art and science of caring for those who are ill through the practice of medicine or osteopathy defined in Title 58, Occupations and Professions.

(2) Physician services are a mandatory Medicaid program authorized by Section 1901 of the Social Security Act, Subsections 1861(q)(r) and 1905(a)(5)(6) of the Social Security Act, and Sections 26-1-5 and 26-18-3.

R414-10-2. Definitions.

In addition to the definitions in Rule R414-1, the following definitions apply to this rule:

(1) "Family planning" means diagnosis, treatment, medications, supplies, devices, and related counseling in family planning methods to prevent or delay pregnancy.

(2) "Global surgical procedures" means preoperative office visits and preparation, the operation itself, local infiltration, topical or regional anesthesia when used, and normal follow-up care.

(3) "Physician services", whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services performed by a Medicaid provider that meet the following standards:

(a) Services are performed within the scope of the physician's license as defined in Title 58, Occupations and Professions;

(b) Services are performed by a doctor of medicine or osteopathy, a doctor of dental surgery or of dental medicine, a doctor of podiatric medicine, a doctor of optometry, a chiropractor, or;

(c) Services include medical care, or any other type of remedial care furnished by licensed practitioners.

(4) "Practice as a physician assistant" means:

(a) acting as an agent of the supervising physician, and when under the authority of a substitute supervising physician, acting in accordance with a delegation of services agreement; and

(b) performing professional duties within the conduct of a physician assistant in diagnosing, treating, advising, or prescribing for any human disease, ailment, injury, infirmity, deformity, pain, or other condition.

(5) "Services" means the types of medical assistance specified in Subsection 1905(a) of the Social Security Act and interpreted in 42 CFR 440.

R414-10-3. Member Eligibility Requirements.

Physician services are available to categorically and medically needy eligible individuals.

R414-10-4. Program Access Requirements.

(1) An eligible Medicaid member may obtain physician services from any Utah Medicaid provider.

(2) An individual who does not meet United States residency requirements may only receive emergency services, including emergency labor and delivery, to treat an emergency medical condition, as stated in Section R414-1-7.

(a) Medicaid does not cover prenatal and post-partum services for undocumented immigrants.

R414-10-5. Service Coverage and Limitations.

(1) General Information.

(a) Physician services may be provided only within the parameters of accepted medical practice and are subject to limitations and exclusions established by the Department on the basis of medical necessity, appropriateness, and utilization control considerations.

(b) Cosmetic or reconstructive procedures, see Section R414-1-29.

(c) Experimental or medically unproven physician services, see Rule R414-1A.

(d) Program limitations and non-covered services are maintained in the Coverage and Reimbursement Code Lookup and updated by notification through the Medicaid Information Bulletin. Medicaid does not cover the following types of services:

(i) Services rendered during a period in which an individual is ineligible for Medicaid;

(ii) Medically unnecessary or unreasonable services;

(iii) Services that fail to meet existing standards of professional practice;

(iv) Services rendered without required prior authorization;

(v) Services, elective in nature, based on patient request or individual preference rather than medical necessity;

(vi) Services claimed fraudulently;

(vii) Services that represent abuse or overuse;

(viii) Services rejected or disallowed by Medicare when the rejection is based on any of the reasons listed in Section R414-10-5;

(ix) Services for which third-party payers are primarily responsible for coverage, such as Medicare, private health insurance, and liability insurance pursuant to Rule R527-936. Medicaid may make a partial payment up to the Medicaid maximum if a third party does not reach the payment limit;

(x) Related services, supplies, or institutional costs during a post-operative recovery period, if the service or procedure is not covered for any of the reasons specified in Section R414-10-5, or due to policy exclusion; and

(xi) Paternity tests.

(e) Alcoholism or drug dependency in an inpatient setting, see Subsection R414-2A-7(2).

(f) A physician assistant who works under the supervision of physician, or as a staff member of a facility, is not an independent practitioner and cannot bill independently.

(i) Service limitations or exclusions that apply to a physician shall also apply to the physician assistant.

(ii) Only a licensed physician may perform the specialty medical services of an assistant surgeon that include complex surgical procedures, while a physician assistant may neither perform specialty medical services nor assist in a surgical procedure.

(iii) Medicaid, as it considers necessary, may apply exceptions to the duties of a supervised-physician assistant in rural areas or in federally-designated health professional shortage areas.

(2) Family Planning Services.

(a) Medicaid does not cover the following family planning services:

(i) Surgical procedures for the reversal of previous elective sterilization on both males and females;

(ii) Infertility studies;

(iii) In vitro fertilization;

(iv) Artificial Insemination; and

(v) Surrogate motherhood, including all services, tests, and related charges.

(3) Anesthesia.

(a) Medicaid may only cover anesthesia services performed by a licensed, qualified provider.

(b) Medicaid does not cover anesthesia standby services.

(4) Surgical Services.

(a) Surgical procedures.

(i) Surgical services are global services. Global services include:

(b) preoperative examination, initiation of the hospital record, and development of a treatment program either in the physician's office on the day before admission, or in the hospital or the physician's office on the same day as hospital admission;

(c) the operation;

(d) any topical, local, or regional anesthesia; and

(e) the normal, uncomplicated follow-up care covering the period of hospitalization and office follow-up for progress checks or any service directly related to the surgical procedure.

(f) Interpretation of "global" services:

(i) A physician may not bill for an office visit the day before surgery, for preadmission or admission workup, or for subsequent hospital care while the patient is being prepared, hospitalized, or under care for a "global" surgical service;

(ii) Only the consulting physician may bill for consultation services when consultation and no other service is provided. When a consulting physician admits and follows a patient, independently or concurrently with the primary physician, the consulting physician may only use admission codes and subsequent care codes;

(iii) Office visits after hospitalization that relate to the same diagnosis are part of the global service. The only exception to either inpatient or office service is for service related to complications, exacerbations, or recurrence of other diseases or problems requiring additional or separate service.

(iv) Complications, exacerbations, recurrence, or the presence of other diseases or injuries, which require services concurrent with the initial surgical procedure during the listed period of normal follow-up care, may warrant additional charges only when the record shows extensive documentation and justification of additional services.

(v) When an additional surgical procedure is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods continue concurrently to their normal terminations.

(vi) Preoperative examination and planning are covered as separate services only under the following circumstances:

(I) When the preoperative visit is the initial visit for the physician and prolonged detention or evaluation is required to establish a diagnosis to determine the need for a specific surgical procedure, or to prepare the patient;

(II) When the preoperative visit is a consultation and the consulting physician does not assume care of the patient; or

(III) When diagnostic procedures are not part of the basic surgical procedure.

(5) Maternity Care and Delivery.

(i) Medicaid does not cover early elective delivery, whether vaginal or caesarean, before 39 weeks.

(6) Abortion, Sterilization and Hysterectomy.

(i) For information on abortion policy, see Rule R414-1B.

(ii) Sterilization and hysterectomy procedures must meet the requirements of 42 CFR 441, Subpart F.

(7) Transplant Services.

(i) Organ transplant services must meet the requirements of Rule R414-10A.

(8) Medicine.

(a) Psychiatric Services. The following services may be covered as a medical benefit:

(i) Physician-ordered psychiatric services for a patient hospitalized in a non-psychiatric unit of a hospital;

(ii) Mental health services that target the diagnosis or treatment of developmental disability or organic disorder; and

(iii) Psychosocial evaluations requested before organ transplantations, psychiatric evaluations before other medical services or surgical procedures, and evaluations for individuals with conditions that require chronic pain management services.

(b) Pain Management Services.

(i) Medicaid covers pain management for delivery and acute postoperative pain.

(ii) Medicaid covers treatment for chronic pain.

(c) Medications.

(i) Medicaid may cover prescription medications subject to the requirements of Rule R414-60.

KEY: Medicaid

July 1, 2017	**26-1-5**
Notice of Continuation October 24, 2016	**26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60. Medicaid Policy for Pharmacy Program.
R414-60-1. Introduction.

The Medicaid Pharmacy program reimburses for covered outpatient drugs dispensed to eligible Medicaid clients by a pharmacy enrolled with Utah Medicaid pursuant to a prescription from an enrolled prescriber operating within the scope of the prescriber's license.

R414-60-2. Definitions.

(1) "Covered outpatient drug" means a drug that meets all of the following criteria:

(a) Requires a prescription for dispensing;

(b) Has a National Drug Code number;

(c) Is eligible for Federal Medical Assistance Percentages funds;

(d) Has been approved by the Food and Drug Administration; and

(e) Is listed in the nationally recognized drug pricing index under contract with the Department.

(2) "Full-benefit dual eligible beneficiary" means an individual who has Medicare and Medicaid benefits.

(3) "Rural pharmacy" means a pharmacy located in the state of Utah, which is outside of Weber County, Davis County, Utah County, and Salt Lake County.

(4) "Urban pharmacy" means a pharmacy located in Weber County, Davis County, Utah County, Salt Lake County, or in another state.

(5) "Usual and customary charge" is the lowest amount a pharmacy charges the general public for a covered outpatient drug, which reflects all advertised savings, discounts, special promotions, or any other program available to the general public.

R414-60-3. Client Eligibility Requirements.

(1) Medicaid covers prescription drugs for individuals who are categorically and medically needy under the Medicaid program.

(2) Outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries will not be covered under Medicaid in accordance with Subsection 1935(a) of the Social Security Act. Certain limited drugs provided in accordance with Subsection 1927(d)(2) of the Social Security Act to all Medicaid recipients, but not included in the Medicare Prescription Drug Benefit-Part D, are payable by Medicaid.

(3) Outpatient drugs included in contracts with the Accountable Care Organization (ACO) must be obtained through the ACO for clients enrolled in an ACO.[

R414-60-4. Program Coverage.

(1) Covered outpatient drugs eligible for Federal Medical Assistance Percentages funds are included in the pharmacy benefit; however, covered outpatient drugs may be subject to limitations and restrictions.

(2) In accordance with Subsection 58-17b-606(4), when a multi-source A-rated legend drug is available in the generic form, Medicaid will only reimburse for the generic form of the drug unless:

(a) reimbursing for the non-generic brand-name legend drug will result in a financial benefit to the State; or

(b) the treating physician demonstrates a medical necessity for dispensing the non-generic, brand-name legend drug.

(3) Prescriptions that are not executed electronically must be written on tamper-resistant prescription forms. Tamper-resistant prescription forms must include all of the following:

(a) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(c) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(d) Documentation by the pharmacy of verbal confirmation of a prescription not written on a tamper resistant prescription form by the prescriber or the prescriber's agent satisfies the tamper-resistant requirement. Documentation of the verbal confirmation must include the date, time, and name of the individual who verified the validity of the prescription.

(e) Pharmacies must maintain documentation of receipt of a prescription by a Medicaid client or the client's authorized representative. The documentation must clearly identify the covered outpatient drug received by the client, the date the covered outpatient drug was received, and who received the covered outpatient drug.

(f) Claims for covered outpatient drugs not dispensed to a Medicaid client or the client's authorized representative within 10 days must be reversed and any payment from Medicaid must be returned.

R414-60-5. Limitations.

(1) Limitations may be placed on drugs in accordance with 42 U.S.C. 1396r-8 or in consultation with the Drug Utilization Review (DUR) Board. Limitations are included in the Pharmacy Services Provider Manual and attachments, incorporated by reference in Section R414-1-5, and may include:

(a) Quantity limits or cumulative limits for a drug or drug class for a specified period of time;

(b) Therapeutic duplication limits may be placed on drugs within the same or similar therapeutic categories;

(c) Step therapy, including documentation of therapeutic failure with one drug before another drug may be used; or

(d) Prior authorization.

(2) A covered outpatient drug that requires prior authorization may be dispensed for up to a 72-hour supply without obtaining prior authorization during a medical emergency.

(3) Drugs listed as non-preferred on the Preferred Drug List may require prior authorization as authorized by Section 26-18-2.4.

(4) Drugs may be restricted and are reimbursable only when dispensed by an individual pharmacy or pharmacies.

(5) Medicaid does not cover drugs not eligible for Federal Medical Assistance Percentages funds.

(6) Medicaid does not cover outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries.

(7) Drugs provided to clients during inpatient hospital stays are not covered as an outpatient pharmacy benefit nor separately payable from the Medicaid payment for the inpatient hospital services.

(8) Medicaid covers only the following prescription cough and cold preparations meeting the definition of a covered outpatient drug:

(a) Guaifenesin with Dextromethorphan (DM) 600mg/30mg tablets;

(b) Guaifenesin with Hydrocodone 100mg/5mL liquid;

(c) Promethazine with Codeine liquid;

(d) Guaifenesin with Codeine 100mg/10mg/5mL liquid;

(e) Carbinoxamine with Pseudoephedrine 1mg/15mg/5mL liquid; and

(f) Carbinoxamine/Pseudoephedrine/DM 15mg/1mg/4mg/5mL liquid.

(9) Medicaid will pay for no more than a one-month supply of a covered outpatient drug per dispensing, except for

the following:

(a) Medications included on the Utah Medicaid Generic Medication Three-Month Supply Medication List attachment to the Pharmacy Services Provider Manual may be covered for up to a three-month supply per dispensing. Medicaid clients eligible for Primary Care Network services under Rule R414-100 are not eligible to receive more than a one-month supply per dispensing.

(b) Prenatal vitamins for pregnant women, multiple vitamins with or without fluoride for children through five years of age, and fluoride supplements may be covered for up to a 90-day supply per dispensing.

(c) Medicaid may cover contraceptives for up to a three-month supply per dispensing.

(10) Medicaid will pay for a prescription refill only when 80% of the previous prescription has been exhausted, with the exception of narcotic analgesics. Medicaid will pay for a prescription refill for narcotic analgesics after 100% of the previous prescription has been exhausted.

(11) Medicaid does not cover the following drugs:

(a) Drugs not eligible for Federal Medical Assistance Percentages funds;

(b) Drugs for anorexia, weight loss or weight gain;

(c) Drugs to promote fertility;

(d) Drugs for the treatment of sexual or erectile dysfunction;

(e) Drugs for cosmetic purposes or hair growth;

(f) Vitamins; except for prenatal vitamins for pregnant women, vitamin drops for children through five years of age, and fluoride supplements;

(g) Over-the-counter drugs not included in the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual;

(h) Drugs for which the manufacturer requires, as a condition of sale, that associated tests and monitoring services are purchased exclusively from the manufacturer or its designee;

(i) Drugs given by a hospital to a patient at discharge;

(j) Breast milk, breast milk substitutes, baby food, or medical foods, except for prescription metabolic products for congenital errors of metabolism;

(k) Drugs available only through single-source distribution programs, unless the distributor is enrolled with Medicaid as a pharmacy provider.

(12) Medicaid may only cover hemophilia clotting factor when it is dispensed by a single-contracted provider in accordance with the Utah Medicaid State Plan.

R414-60-6. Copayment Policy.

Medicaid clients are to pay any applicable copayment amount that complies with the requirements of the Utah Medicaid State Plan and Rule R414-1.

R414-60-7. Reimbursement.

(1) A pharmacy may not submit a charge to Medicaid that exceeds the pharmacy's usual and customary charge.

(2) Covered-outpatient drugs are reimbursed at the lesser of the following:

(a) The Wholesale Acquisition Cost;

(b) The Federal Upper Limit assigned by the Centers for Medicare and Medicaid Services;

(c) The Utah Maximum Allowable Cost; and

(d) The submitted ingredient cost.

(e) If a prescriber obtains prior authorization for a brand-name version of a multi-source drug in accordance with 42 CFR 447.512 or if a brand-name drug is covered because a financial benefit will accrue to the State in accordance with Section 58-17b-606, then Medicaid will not apply the Utah Maximum Allowable Cost or Federal Upper Limit to the claim.

(f) Pharmacies participating in the 340B program and using medications obtained through the 340B program to bill Medicaid must submit the actual acquisition cost of the medication on the claim.

(g) Pharmacies that participate in the Federal Supply Schedule and use medications obtained through the schedule to bill Utah Medicaid, must submit the actual acquisition cost of the medication on the claim unless the claim is reimbursed as a bundled charge or All Inclusive Rate.

(h) Pharmacies that obtain and use medications at a nominal price must submit the actual acquisition cost of the medication on the claim.

(i) The Utah Maximum Allowable Cost (UMAC) for drugs for which the Centers for Medicare and Medicaid Services (CMS) publishes a National Average Drug Acquisition Cost (NADAC), is the NADAC itself. The UMAC for which CMS does not publish a NADAC is calculated by the Department.

(3) Dispensing fees are as outlined in the Utah State Plan, Attachment 4.19-B as approved by CMS and as follows:

(a) Medicaid will pay the lesser of the assigned dispensing fee or the submitted dispensing fee;

(b) Medicaid will only pay one dispensing fee per 24 days per covered outpatient drug per pharmacy.

(4) Medicaid will pay the lesser of the sum of the allowed amount for the covered outpatient drug and dispensing fee or the billed charges.

(5) Immunizations provided to Medicaid clients who are at least 19 years of age will be paid for the cost of the immunization plus a dispensing fee. Medicaid will pay the lesser of the allowed or submitted charges.

(6) Immunizations provided to Medicaid clients who are 18 years old or younger will only be eligible for a dispensing fee with no reimbursement for the immunization. Immunizations for Medicaid clients who are 18 years old or younger must be obtained through the Vaccines for Children program.

(7) Blood glucose test strips listed as preferred on the Utah Medicaid Preferred Drug List will be reimbursed at the lesser of the Wholesale Acquisition Cost with no dispensing fee or the billed charges.

(8) In accordance with the Utah Medicaid State Plan, the Department may only reimburse a single-contracted provider for the purchase of hemophilia clotting factor.

R414-60-8. Mandatory Patient Counseling.

(1) Medicaid clients, or their representatives, must receive counseling that fulfills the requirements of 42 U.S.C. 1396r-8 each time a covered outpatient medication is dispensed.

(2) Counseling is not required if a Medicaid client, or their representative, refuses the offer to counsel.

(3) The offer to counsel must be documented and producible upon request.

R414-60-9. New Drug Products.

A new drug product, including a new size or strength of an existing approved product, may be reviewed by the DUR Board to determine whether the drug should be subject to restrictions or limitations. New drugs may be withheld from coverage for no more than twelve weeks while restrictions or limitations are being evaluated.

R414-60-10. Over-the-Counter Drugs.

Medicaid covers over-the-counter drugs when the drug is listed on the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual, incorporated by reference in Section R414-1-5.

R414-60-11. Compounds.

(1) Compounded non-sterile prescriptions are a covered benefit if at least one ingredient is a covered-outpatient drug that would otherwise qualify for coverage.

(2) Compounded sterile prescriptions are a covered benefit if at least one ingredient is a covered-outpatient drug that would otherwise qualify for coverage, and is prepared by a pharmacy that has certified to Utah Medicaid that it adheres to the United States Pharmacopeia/National Formulary chapter <797> standard, and tests the final product for sterility, potency and purity.

KEY: Medicaid
October 1, 2017 26-18-3
Notice of Continuation April 28, 2017 26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-100. Medicaid Primary Care Network Services.
R414-100-1. Introduction and Authority.

This rule lists the services under the Medicaid Primary Care Network (PCN). The Primary Care Network is authorized by a waiver of federal Medicaid requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act effective January 1, 1999. This rule is authorized by Title 26, Chapter18, UCA.

R414-100-2. Definitions.

(1) "Emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the enrollee's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(2) "Emergency services" means:

(a) attention provided within 24 hours of the onset of symptoms or within 24 hours of diagnosis;

(b) for a condition that requires acute care, and is not chronic;

(c) reimbursed only until the condition is stabilized sufficient that the patient can leave the hospital emergency department; and

(d) is not related to an organ transplant procedure.

(2) "Outpatient" means an enrollee who receives services from a licensed outpatient care facility.

(3) "Primary care" means services to diagnose and treat illness and injury as well as preventive health care services. Primary care promotes early identification and treatment of health problems, which can help to reduce unnecessary complications of illness or injury and maintain or improve overall health status.

R414-100-3. Services Available.

(1) To meet the requirements of 42 CFR 431.107, the department contracts with each provider who furnishes services under the PCN.

(2) By signing a provider agreement with the department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the enrollee agrees that the department's obligation to reimburse for services is governed by contract between the department and the provider.

(4) Medical or hospital services for which providers are reimbursed under the PCN are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(5) The following services in the Medicaid Primary Care Network are available to those adults found eligible under Section 1931 of the federal Social Security Act (Aid to Families of Dependent Children adults and medically needy adults):

(a) emergency services only in a designated hospital emergency department;

(b) primary care physician services provided directly by licensed physicians or osteopaths, or by licensed certified nurse practitioners, or physician assistants under appropriate supervision of the physician or osteopath, but not including pregnancy related or mental health services by any of the listed providers;

(c) services associated with surgery or administration of anesthesia are physician services to be provided by physicians or licensed certified nurse anesthetists;

(d) laboratory and radiology services by licensed and certified providers;

(e) durable medical equipment, supplies and appliances used to assist the patient's medical recovery;

(f) preventive services, immunizations and health education methods and materials to promote wellness, disease prevention and manage illnesses;

(g) pharmacy services by a licensed pharmacy limited to four prescriptions per month, per client with no overrides or exceptions in the number of prescriptions;

(h) dental services are limited to examinations, cleanings, fillings, extractions, treatment of abscesses or infections and to be covered must be provided by a dentist in the office;

(i) transportation services limited to ambulance (ground and air) service for medical emergencies;

(j) interpretive services provided by contracting entities competent to provide medical translation services for people with limited English proficiency and interpretive services for the deaf; and

(k) vision services once every 12 months including an eye examination/refraction by a licensed ophthalmologists or optometrists, but not including the cost of glasses or other refractive device.

KEY: Medicaid, primary care network
September 27, 2017 26-18
Notice of Continuation May 5, 2017

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-200. Non-Traditional Medicaid Health Plan Services.
R414-200-1. Introduction and Authority.

This rule lists the services under the Non-Traditional Medicaid Health Plan (NTHP). This plan is authorized by a waiver of federal Medicaid requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act effective January 1, 1999. This rule is authorized by Title 26, Chapter 18, UCA.

R414-200-2. Definitions.

(1) "Emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the enrollee's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(2) "Enrollee" means an eligible individual including Section 1931 Temporary Assistance for Needy Families Adults, the Section 1931 related medically needy and those eligible for Transitional Medicaid.

R414-200-3. Services Available.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the NTHP.

(a) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(b) By signing an application for Medicaid coverage, the applicant agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

(2) Medical or hospital services for which providers are reimbursed under the Non-Traditional Medicaid Health Plan are limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(3) The following services, as more fully described and limited in provider contracts and provider manuals; are available to Non-Traditional Medicaid Health Plan enrollees:

(a) inpatient hospital services, provided by bed occupancy for 24 hours or more in an approved acute care general hospital under the care of a physician if the admission meets the established criteria for severity of illness and intensity of service;

(b) outpatient hospital services which are medically necessary diagnostic, therapeutic, preventive, or palliative care provided for less than 24 hours in outpatient departments located in or physically connected to an acute care general hospital;

(c) emergency services in dedicated hospital emergency departments;

(d) physician services provided directly by licensed physicians or osteopaths, or by licensed certified nurse practitioners, licensed certified nurse midwives, or physician assistants under appropriate supervision of the physician or osteopath.

(e) services associated with surgery or administration of anesthesia provided by physicians or licensed certified nurse anesthetists;

(f) vision care services by licensed ophthalmologists or licensed optometrists, within their scope of practice; limited to one annual eye examination or refraction and no eyeglasses.

(g) laboratory and radiology services provided by licensed and certified providers;

(h) dialysis to treat end-stage renal failure provided at a Medicare-certified dialysis facility;

(i) home health services defined as intermittent nursing care or skilled nursing care provided by a Medicare-certified home health agency;

(j) hospice services provided by a Medicare-certified hospice to terminally ill enrollees (six month or less life expectancy) who elect palliative versus aggressive care;

(k) abortion and sterilization services to the extent permitted by federal and state law and meeting the documentation requirement of 42 CFR 440, Subparts E and F;

(l) certain organ transplants;

(m) services provided in freestanding emergency centers, surgical centers and birthing centers;

(n) transportation services, limited to ambulance (ground and air) service for medical emergencies;

(o) preventive services, immunizations and health education activities and materials to promote wellness, prevent disease, and manage illness;

(p) family planning services provided by or authorized by a physician, certified nurse midwife, or nurse practitioner to the extent permitted by federal and state law;

(q) pharmacy services provided by a licensed pharmacy;

(r) inpatient mental health services, limited to 30 days per enrollee per calendar year;

(s) outpatient mental health services, limited to 30 visits per enrollee per calendar year;

(t) outpatient substance abuse services;

(u) dental services are not covered;

(v) interpretive services if they are provided by entities under contract with the Department of Health to provide medical translation services for people with limited English proficiency and interpretive services for the deaf;

(w) physical therapy services provided by a licensed physical therapist if authorized by a physician, limited to ten aggregated physical or occupational therapy visits per calendar year; and

(x) occupational therapy services provided for fine motor development, limited to ten aggregated physical or occupational therapy visits per year.

(4) Emergency services are:

(a) limited to attention provided within 24 hours of the onset of symptoms or within 24 hours of diagnosis;

(b) for a condition that requires acute care and is not chronic;

(c) reimbursed only until the condition is stabilized sufficient that the patient can leave the hospital emergency department; and

(d) not related to an organ transplant procedure.

(5) The vision care benefit is limited to $30 per year.

KEY: Medicaid, non-traditional, cost sharing
September 27, 2017 26-18
Notice of Continuation May 5, 2017

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-305. Resources.
R414-305-1. Purpose and Authority.

This rule is established under the authority of Section 26-18-3 and establishes the resource provisions for Medicaid eligibility.

R414-305-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule.

(2) The following definitions apply in this rule:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers, and the cost of opening and closing a grave site.

(b) "Penalty period" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a home and community-based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

R414-305-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Resource Provisions.

(1) To determine resource eligibility of an individual on the basis of being aged, blind or disabled, the Department adopts and incorporates by reference 42 CFR 435.840, 435.845, October 1, 2012 ed., and 20 CFR 416.1201, 416.1202, 416.1205 through 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.1250, April 1, 2012 ed. The Department also adopts and incorporates by reference Section 1917(b), (d), (e), (f) and (g) of the Compilation of the Social Security Laws in effect January 1, 2013. The eligibility agency may not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency applies the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is $2,000 for a one-person household and $3,000 for a two-person household.

(4) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is $15,000. This limit applies whether the household size is one or more than one.

(5) The eligibility agency shall base non-institutional and institutional Medicaid eligibility on all available resources owned by the individual, or considered available to the individual from a spouse or parent. The eligibility agency may not grant eligibility based upon the individual's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, April 1, 2012 ed., unless Social Security is excluding the resources for an SSI recipient while the recipient takes steps to dispose of the excess resources.

(6) The eligibility agency may not count any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act. Any money from the resource that is given to the child as unearned income is a countable resource that begins the month after the child receives it.

(7) The eligibility agency shall count the resources of a ward that are controlled by a legal guardian as the ward's resources.

(8) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(9) If a resource is available, but a legal impediment exists, the eligibility agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resource exists:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(10) Water rights attached to the home and the lot on which the home sits are exempt as long as the home is the individual's principal place of residence.

(11) For an institutionalized individual, the eligibility agency may not consider a home or life estate to be an exempt resource.

(12) To determine eligibility for nursing facility or other long-term care services, the eligibility agency shall exclude the value of the individual's principal home or life estate from countable resources if one of the following conditions is met:

(a) the individual intends to return to the home;

(b) the individual's spouse resides in the home;

(c) the individual's child who is under the age of 21, or who is blind or disabled resides in the home; or

(d) a reliant relative of the individual resides in the home.

(13) Even if the conditions in Subsection R414-305-3(12) are met, an individual is ineligible to receive nursing facility services or other long-term care services if the full equity value of the individual's home or life estate exceeds $500,000, or increased value according to the provisions of 42 U.S.C. 1396p(f)(1)(C) unless the individual's spouse, or the individual's child who is under the age of 21 or is blind or permanently disabled lawfully resides in the home. The individual may only qualify for Medicaid to cover ancillary services.

(14) For Aged, Blind and Disabled Medicaid, the eligibility agency may not count up to $6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(15) The eligibility agency may retroactively designate for burial a previously unreported resource that meets the criteria for burial funds found in 20 CFR 416.1231. The effective date of the exclusion cannot be earlier than the first day of the month after the month in which the funds were designated for burial or intended for burial, were separated from non-burial funds, and the client was eligible for Medicaid. The eligibility agency shall treat the resources as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

(16) One vehicle is exempt if it is used for regular transportation needs of the individual or a household member.

(17) The eligibility agency may not count resources of an SSI recipient who has a plan for achieving self-support approved by the Social Security Administration when the resources are set aside under the plan to purchase work-related equipment or meet self-support goals.

(18) The eligibility agency may not count an irrevocable burial trust as a resource. Nevertheless, if the owner is institutionalized or on home and community-based waiver Medicaid, the value of the trust, which exceeds $7,000, is considered a transferred resource.

(19) The eligibility agency may not count business resources that are required for employment or self-employment.

(20) For the Medicaid Work Incentive Program, the

eligibility agency may not count the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if the funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(21) After qualifying for the Medicaid Work Incentive Program, the eligibility agency may not count the resources described in Subsection R414-305-3(20) to allow the individual to qualify for other Medicaid programs for the aged, blind or disabled, and not solely the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(22) Assets of an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997, are considered available to the alien. The eligibility agency shall stop counting assets from a sponsor when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(23) The eligibility agency shall not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(24) The eligibility agency may not count as a resource any federal tax refund and refundable credit that an individual receives for 12 months after the month of receipt.

(25) The eligibility agency may not count as a resource, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(26) The eligibility agency may not count certain property and rights of federally-recognized American Indians including certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation; ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources); and ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(27) The eligibility agency shall not count as a resource a qualified Achieving a Better Life Experience (ABLE) account.

(28) The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

(29) Under the authority of Subsection 1902(r)(2) of the Social Security Act, to determine an individual's eligibility for Medicaid for long-term care services, the Department disregards otherwise countable assets or resources in an amount equal to the insurance benefit payments made to or on behalf of an individual who is a beneficiary under a qualified long-term care insurance partnership policy that meets the provisions found in 42 U.S.C. 1396p(b)(1)(C)(iii). The amount of the disregard applies to otherwise countable assets the client owns or that are deemed available to the client for the purpose of determining eligibility, and is equal to the amount of benefits the client has received from the partnership policy up through the month immediately before the month of application for long-term care assistance under Utah Medicaid.

(a) This resource disregard applies to aged, blind or disabled individuals who qualify for Medicaid under one of the following eligibility coverage groups found under:

(i) Subsection 1902(a)(10)(A)(ii)(V) of the Social Security Act; or

(ii) Subsection 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

(b) The Department treats payments received after eligibility for long-term care services as a third-party liability that does not result in the disregard of additional resources.

(c) Assets disregarded under Subsection R414-305-3(28) are not subject to estate recovery authorized under Section 26-19-13.7, with the exception defined below in Subsection R414-305-3(28)(e).

(d) This disregard is not specific to any one asset. Any countable assets the individual owns or that are deemed available to the client are subject to the provisions defined in Section R414-305-9 regarding transfers of assets. The Department shall apply a penalty period or an overpayment proceeding for any transfer of assets for less than fair market value. In the event the Department learns of an asset transfer at the time of an estate recovery action for which a penalty period is not assessed or an overpayment is not collected, the Department shall reduce the amount of assets in the estate that could otherwise be excluded from the estate recovery requirements by the value of the assets transferred for less than fair market value. The Department may also take legal steps to recover assets transferred for less than fair market value.

(e) Home equity in excess of the standard described in Subsection R414-305-3(13) is not a countable resource, so this disregard does not affect the application of Subsection R414-305-3(13).

(f) The Department recognizes long-term care insurance partnership policies purchased in other states under the reciprocity requirements of the statute. The beneficiary of the policy must have been a resident in a partnership state when coverage first became effective under the policy.

(30) Life estates.

(a) For non-institutional Medicaid, the eligibility agency shall count life estates as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, the eligibility agency shall count life estates even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in Subsection R414-305-3(12).

(c) The individual may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the individual and the current market value of the property.

(d) The following table lists the life estate figure corresponding to the individual's age. The eligibility agency uses this figure to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988
2	.99017
3	.99008
4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663

10	.98565
11	.98453
12	.98329
13	.98198
14	.98066
15	.97937
16	.97815
17	.97700
18	.97590
19	.97480
20	.97365
21	.97245
22	.97120
23	.96986
24	.96841
25	.96678
26	.96495
27	.96290
28	.96062
29	.95813
30	.95543
31	.95254
32	.94942
33	.94608
34	.94250
35	.93868
36	.93460
37	.93026
38	.92567
39	.92083
40	.91571
41	.91030
42	.90457
43	.89855
44	.89221
45	.88558
46	.87863
47	.87137
48	.86374
49	.85578
50	.84743
51	.83674
52	.82969
53	.82028
54	.81054
55	.80046
56	.79006
57	.77931
58	.76822
59	.75675
60	.74491
61	.73267
62	.72002
63	.70696
64	.69352
65	.67970
66	.66551
67	.65098
68	.63610
69	.62086
70	.60522
71	.58914
72	.57261
73	.55571
74	.53862
75	.52149
76	.50441
77	.48742
78	.47049
79	.45357
80	.43659
81	.41967
82	.40295
83	.38642
84	.36998
85	.35359
86	.33764
87	.32262
88	.30859
89	.29526
90	.28221
91	.26955
92	.25771
93	.24692
94	.23728
95	.22887
96	.22181
97	.21550
98	.21000
99	.20486
100	.19975
101	.19532
102	.19054
103	.18437
104	.17856
105	.16962
106	.15488
107	.13409
108	.10068
109	.04545

R414-305-4. Parents and Caretaker Relatives, Pregnant Woman and Child using MAGI methodology Resource Provisions.

The Department adopts 42 CFR 435.603(g), October 1, 2012 ed., which is incorporated by reference, regarding no resource test for coverage groups subject to MAGI-based methodologies for determining eligibility.

R414-305-5. Resource Provisions for Parents and Caretaker Relatives, Pregnant Woman, and Child Under Non-MAGI-Based Community and Institutional Medicaid.

(1) The Department determines resource eligibility for an individual under the Parents and Caretaker Relatives, Pregnant Woman, and Child non-MAGI-based Medicaid programs, as described in 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4), and (6), 233.20(a)(3)(vi)(A), 42 U.S.C. 604(h), 1382b(a)(13), and 1396p(d), (e), (f) and (g). The eligibility agency may not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency shall apply the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) The medically needy resource limit is $2,000 for a one-person household, $3,000 for a two-person household and $25 for each additional household member.

(4) To determine countable resources for Medicaid eligibility, the eligibility agency shall consider all available resources owned by the individual. The agency may not consider a resource unavailable based upon the individual's intent or action of disposing of non-liquid resources.

(5) The eligibility agency shall count resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(6) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an individual, the eligibility agency shall count the resources as the individual's. The arrangement may be formal or informal.

(7) If a resource is available, but a legal impediment exists, the agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(8) The eligibility agency shall exclude a maximum of $1,500 in equity value of one vehicle.

(9) The eligibility agency may not count as resources the value of household goods and personal belongings that are essential for day-to-day living. The agency shall count any single household good or personal belonging with a value that exceeds $1,000 toward the resource limit. The agency may not count as a resource the value of any item that a household member needs because of the household member's medical or

physical condition.

(10) The eligibility agency may not count the value of one wedding ring and one engagement ring as a resource.

(11) For a non-institutionalized individual, the eligibility agency may not count the value of a life estate as an available resource if the life estate is the individual's principal residence. If the life estate is not the principal residence, the provision in Subsection R414-305-3(28) shall apply.

(12) The eligibility agency may not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(13) For a non-institutionalized individual, the eligibility agency may not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency shall count as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of Subsections R414-305-3(12), (13) and (28) shall apply to the individual's home or life estate.

(14) The agency may not count as a resource the value of water rights attached to an excluded home and lot.

(15) The eligibility agency may not count any resource or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency shall count as a resource any money that a child receives as unearned income, which the child retains beyond the month of receipt.

(16) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension, if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(17) The eligibility agency shall exclude as a resource retroactive benefits received from the Social Security Administration and the Railroad Retirement Board for the first nine months after receipt.

(18) The eligibility agency shall exclude from resources a burial and funeral fund or funeral arrangement up to $1,500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. The client shall separate and clearly designate the burial funds from the non-burial funds. The agency may not count as a resource interest earned on exempt burial funds that is left to accumulate. If an individual uses exempt burial funds for some other purpose, the agency shall count the remaining funds as an available resource beginning on the date that the funds are withdrawn.

(19) Assets of an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997, are considered available to the alien. The eligibility agency shall stop counting a sponsor's assets when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(20) The eligibility agency may not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(21) The eligibility agency may not count business resources that are required for employment or self-employment. The agency shall treat non-business, income-producing property in the same manner as the SSI program as defined in 42 CFR 416.1222.

(22) The eligibility agency may not count as a resource retirement funds held in an employer or union pension plan, a retirement plan or account including 401(k) plans, and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

(23) The eligibility agency may not count as a resource any federal tax refund and refundable credit that an individual receives for 12 months after the month of receipt.

(24) The eligibility agency may not count as income, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(25) The eligibility agency may not count as resources certain property and rights of federally-recognized American Indians including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources); and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(26) The eligibility agency may not count as a resource, funds held in a Utah Educational Savings Plan for the following individuals:

(a) Medically Needy Children as described in Subsection 1902(a)(10)(C)(ii)(I) of the Social Security Act;

(b) Medically Needy Children as described in Subsection 1905(a)(i) of the Social Security Act, who are 18 years old, in school, and expected to graduate before turning 19 years of age;

(c) Medically Needy Pregnant Women as describe in Subsection 1902(a)(10)(C)(ii)(II) of the Social Security Act; and

(d) Medically Needy Parents and Caretaker Relatives as described in Subsection 1905(a)(ii) of the Social Security Act.

(27) The eligibility agency may only count the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

R414-305-6. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

(1) The eligibility agency shall apply the provisions of 42 U.S.C. 1396r-5 to determine the value of the total joint resources of an institutionalized individual and a community spouse, and the spousal assessed share.

(2) The resource limit for an institutionalized individual is $2,000.

(3) At the request of either the institutionalized individual or the individual's spouse and upon receipt of relevant documentation of resources, the eligibility agency shall assess and document the total value of resources using the methodology described in Subsection R414-305-6(4) as of the first continuous period of institutionalization or upon application for Medicaid home and community-based waiver services. The eligibility agency shall notify the requester of the results of the assessment. The agency may not require the individual to apply for Medicaid or pay a fee for the assessment.

(4) The assessment is a computation of the total value of resources in which the institutionalized individual or the community spouse has an ownership interest. The spousal share is equal to one-half of the total value computed. The eligibility

agency shall count the resources for the assessment that include those the couple has on the date that one spouse becomes institutionalized or applies for Medicaid for home and community-based waiver services, and the other spouse remains in the community and is not eligible for Medicaid for home and community-based waiver services.

(a) The community spouse's assessed share of resources is one-half of the total resources. Nevertheless, the protected resource allowance for the community spouse may be less than the assessed share.

(b) Upon application for Medicaid, the eligibility agency shall set the protected share of resources for the community spouse when countable resources equal no more than the community spouse's protected share as determined under 42 U.S.C. 1396r-5(f) plus the resource limit for the institutionalized spouse.

(c) The eligibility agency shall set the community spouse's protected share of resources at the community spouse's assessed share of the resources with the following exceptions:

(i) If the spouse's assessed share of resources is less than the minimum resource standard, the protected share of resources is the minimum resource standard;

(ii) If the spouse's assessed share of resources is more than the maximum resource standard, the protected share of resources is the maximum resource standard;

(iii) The eligibility agency shall use the minimum and maximum resource standards permitted under 42 U.S.C. 1396r-5(f) to determine the community spouse's protected share.

(d) In making a decision to modify the community spouse's protected share of resources, the eligibility agency shall apply the income first provisions of 42 U.S.C. 1396r-5(d)(6).

(5) The eligibility agency shall count any resource owned by the community spouse in excess of the community spouse's protected share of resources to determine the institutionalized individual's initial Medicaid eligibility.

(6) After the eligibility agency establishes eligibility for the institutionalized spouse, the agency shall allow a protected period for the couple to either use excess resources, or change the ownership of resources held jointly or held only in the name of the institutionalized spouse.

(a) The protected period continues until the resources held in the institutionalized spouse's name do not exceed $2,000, or until the time of the next regularly scheduled eligibility redetermination, whichever occurs first.

(b) The institutionalized individual may do the following:

(i) use resources held in his name for his benefit or for the benefit of his spouse;

(ii) transfer resources to the community spouse to bring the resources held only in the name of the community spouse up to the amount of the community spouse's protected share of resources and to bring the resources held only in the name of the institutionalized spouse down to the Medicaid resource limit; or

(iii) a combination of both.

(7) The eligibility agency may not count resources held in the name of the community spouse as available to the institutionalized spouse beginning the month after the month in which the agency establishes eligibility.

(8) If an individual is otherwise eligible for institutional Medicaid, the eligibility agency may not count the community spouse's resources as available to the institutionalized individual due to an uncooperative spouse or because the spouse cannot be located if all of the following criteria are met:

(a) The individual assigns support rights to the agency;

(b) The individual cannot get medical care without Medicaid;

(c) The individual is at risk of death or permanent disability without institutional care.

R414-305-7. Treatment of Trusts.

(1) The eligibility agency shall apply the criteria in 42 U.S.C. 1396a(k), to determine the availability of trusts established before August 11, 1993.

(a) A Medicaid qualifying trust is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust. The distribution of payments is determined by one or more trustees who are permitted to exercise some amount of discretion with respect to the distribution to the individual.

(b) The amount of the trust property that is counted as an available resource to the individual who established the trust (or whose spouse established the trust) is the maximum amount that the trustee is permitted to distribute under the terms of the trust for the individual's benefit. This amount of property is counted as available whether or not it is actually disbursed by the trustee or received by the beneficiary. It does not matter whether the trust is irrevocable or whether it is established for a purpose other than to qualify for Medicaid.

(c) Payments made from the available portion of the trust do not count as income because the available portion of the trust is counted as a resource. If payments are made from any portion of the trust that is not counted as a resource, the payments are counted as income in the month received.

(2) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(A) concerning trusts for a Disabled Person under Age 65. These trusts are commonly known as a special needs trust for a disabled person. Assets held in a trust that complies with the provisions in Subsection R414-305-7(2) and (4) do not count as available resources.

(a) The trust must be established solely for the benefit of the disabled individual by the individual, a parent, grandparent, legal guardian of the individual, or a court. A trust established by the disabled individual must be established on or after December 13, 2016.

(b) The eligibility agency shall treat any additions to the trust corpus with assets not belonging to the disabled trust beneficiary as a gift to the trust beneficiary. The additions irrevocably become part of the trust corpus and are subject to all provisions of Medicaid restrictions that govern special needs trusts.

(c) The trust must be irrevocable. No one may have any right or power to alter, amend, revoke, or terminate the trust or any of its terms, except that the trust may include language that provides that the trust may be amended but only if necessary to conform with subsequent changes to the requirements of 42 U.S.C. 1396p(d)(4)(A) or synonymous state law.

(d) The trust cannot be altered or converted from an individual trust to a "pooled trust" under 42 U.S.C. 1396p(d)(4)(C).

(e) The trust must terminate upon the death of the disabled individual or exhaustion of trust corpus and must include language that specifically provides that upon the death of the beneficiary or early termination of the trust, whichever occurs first, the trustees will notify Medicaid and will pay all amounts remaining in the trust to the State up to the total amount of medical assistance the State has paid on behalf of the individual. The trust shall comply fully with this obligation to first repay the State without requiring the State to take any action except to establish the amount to be repaid.

(f) The sole lifetime beneficiary of the trust must be the disabled individual, and the Medicaid agency must be the preferred remainder beneficiary. Distributions from the trust during the beneficiary's lifetime may be made only to or for the benefit of the disabled individual.

(g) The eligibility agency shall continue to exclude assets held in the trust from countable resources after the disabled individual reaches age 65. Subsequent additions to the trust other than interest on the corpus after the person turns 65 are

not assets of an individual under age 65 and the agency shall treat the transfer as a transfer of resources for less than fair market value, which may create a period of ineligibility for certain Medicaid services.

(h) A trust that provides benefits to other persons is not an individual special needs trust and does not the meet the criteria to be excluded from resources.

(i) A corporate trustee may charge a reasonable fee for services.

(j) The trust may compensate a guardian only as provided by law. The trust may not compensate the parent of a minor child from the trust as the child's guardian.

(k) Additional trusts cannot be created within the special needs trust.

(3) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(C) concerning pooled trusts for disabled individuals. A pooled trust is a specific trust for disabled individuals that meets all of the following conditions:

(a) The trust contains the assets of disabled individuals;

(b) The trust must be established and managed by an entity that has been granted non-profit status by the Internal Revenue Service. The non-profit entity must submit to the State a letter documenting the non-profit status with the trust documents;

(c) The trustees must maintain a separate account for each disabled beneficiary whose assets are placed in the pooled trust; however, for the purposes of investment and management of the funds, the trust may pool the funds from the individual accounts. If someone other than the beneficiary transfers assets to the pooled trust administrator to be used on behalf of that beneficiary of the pooled trust, the eligibility agency shall treat the assets as a gift to that beneficiary, which the administrator must add to and manage as part of the balance of the beneficiary's account and which are subject to all provisions of Medicaid restrictions that govern pooled trusts.

(d) Accounts in the trust must be established solely for the benefit of individuals who are disabled as defined in 42 U.S.C. 1382c(a)(3).

(e) The trust must be irrevocable; accounts set up in the trust must be irrevocable.

(f) Individual accounts may be established only by the parent, grandparent or legal guardian of the individual, by the individual, or by a court.

(g) An initial transfer of funds or any additions or augmentations to a pooled trust account by an individual 65 years of age or older is a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services.

(h) The disabled individual cannot control any spending by the trust.

(i) Individual trust accounts may not be liquidated before the death of the beneficiary without first making payment to the State for medical assistance paid on behalf of the individual.

(j) The trust must include language that specifically provides that upon the death of the trust account beneficiary, the trustees will notify the Medicaid agency and will pay all amounts remaining in the beneficiary's account to the State up to the total medical assistance paid on behalf of the beneficiary. The trust may retain a maximum of 50% of the amount remaining in the beneficiary's account at death to be used for other disabled individuals if the trust has established provisions by which it will assure that the retained funds are used only for individuals meeting the disability criteria found in 42 U.S.C. 1382c(a)(3).

(k) A pooled trust that retains some portion of a deceased beneficiary's trust funds must describe how retained funds are used for other disabled persons. Any funds that are placed in an individual beneficiary's account or that are used to set up an account for an individual beneficiary who does not otherwise have funds to place in the pooled trust are subject to all of the provisions of Medicaid restrictions that govern pooled trusts. The pooled trust may include a plan for using retained funds only for incidental, one-time services to qualified disabled individuals who do not have accounts in the pooled trust.

(4) The following provisions apply to both individual trusts and pooled trusts described in Subsection R414-305-7(2) and (3):

(a) No expenditures may be made after the death of the beneficiary before repayment to the State, except for federal and state taxes and necessary and reasonable administrative costs of the trust incurred in closing the trust;

(b) The trust must provide that if the beneficiary has received Medicaid benefits in more than one state, each state that provided Medicaid benefits shall be repaid. If the remaining balance is insufficient to repay all benefits paid, then each state will be paid its proportionate share;

(c) The trust or an attached schedule must identify the amount and source of the initial trust property. The disabled individual must report subsequent additions to the trust corpus to the eligibility agency;

(d) If the trust is funded, in whole or in part, with an annuity or other periodic payment arrangement, the State must be named in controlling documents as the preferred remainder beneficiary in the first position up to the total amount of medical assistance paid on behalf of the individual;

(i) Any funds remaining after full repayment of the medical assistance can be paid to a secondary remainder beneficiary;

(ii) The eligibility agency shall treat any provision or action that does or will divert payments or principal from the annuity or payment arrangement to someone other than the excluded trust or the Medicaid agency as a transfer of assets for less than fair market value with the exception that any remainder after the Medicaid agency has been fully repaid may be paid to a secondary beneficiary;

(e) The eligibility agency shall count cash distributions from the trust as income in the month received;

(f) The eligibility agency shall count retained distributed amounts as resources beginning the month which follows the month that the amounts are distributed. The agency shall apply the applicable resource rules to assets purchased with trust funds and given to the beneficiary as his or her personal possessions. The disabled individual must report the receipt of payments or assets from the trust within ten days of receipt. The agency shall exclude assets purchased with trust funds if the trust retains ownership;

(g) The eligibility agency shall count distributions from the trust covering the individual's expenses for food or shelter as in-kind income to determine Medicaid eligibility in the month paid;

(h) If expenditures made from the trust also incidentally provide an ongoing and continuing benefit to other persons, those other persons who also benefit must contribute a pro-rata share to the trust for the expenses associated with their use of the acquisition;

(i) Contracts to provide personal services to the disabled individual must be in writing, describe the services to be provided, pay fair market rate consistent with rates charged in the community for the type and quality of services to be provided, and be executed in advance of any services being provided and paid. The eligibility agency may require a statement of medical need for the services from the individual's medical practitioner. If the person who is to provide the services is a family member or friend, the eligibility agency may require verification of the person's ability to carry out the needed services;

(j) Distributions from the trust made to or for the benefit of a third party that are not for the benefit of the disabled individual are treated as a transfer of assets for less than fair

market value and may create a period of ineligibility for certain Medicaid services. This includes such things as payments of the expenses or travel costs of persons other than a medically necessary attendant;

(k) The beneficiary must submit an annual accounting of trust income and expenditures and a statement of trust assets to the eligibility agency upon request or upon any change of trustee.

(5) The eligibility agency may not count assets held in a pooled trust that comply with the provisions in Subsection R414-305-7(3) and (4) as available resources.

(6) 42 U.S.C. 1396p(d)(4)(B), provides for an exemption from the trust provisions for qualified income trusts (also known as Miller Trusts). Special provisions for this form of trust apply, under federal law, only in those states that do not provide medically needy coverage for nursing facility services. Because Utah covers services in nursing facilities under the medically needy coverage group of the Medicaid program, the establishment of a qualified income trust shall be treated as an asset transfer for the purposes of qualifying for Medicaid. This presumption shall apply whether the individual is seeking nursing facility services or home and community-based services under one of the waiver programs.

R414-305-8. Transfer of Resources for Non-Institutional Medicaid Coverage Groups.

The eligibility agency may not impose a penalty period for the transfer of resources to determine eligibility for individuals who are not institutionalized or eligible for home and community-based services waivers.

R414-305-9. Transfer of Resources for Institutional Medicaid and Home and Community Based Services Waivers.

(1) The eligibility agency shall apply the provisions of 42 U.S.C. 1396p(c) and (e) to determine if a penalty period applies for a transfer of assets for less than fair market value.

(2) The transfer requirements of 42 U.S.C. 1396p(c) and (e) apply if an individual or the individual's spouse transfers the home, life estate, assets disregarded for eligibility purposes pursuant to Subsection R414-305-3(28), or any other asset on or after the look-back date based on an application for long-term care Medicaid services.

(3) If an individual or the individual's spouse transfers assets in more than one month after February 7, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the penalty period. The eligibility agency shall apply partial month penalty periods for transferred amounts that are less than the monthly average private pay rate for nursing home services.

(4) In accordance with 42 U.S.C. 1396p(c), the penalty period for a transfer of assets that occurs after February 7, 2006, begins the first day of the month during or after which assets are transferred, or the date on which the individual is eligible for Medicaid coverage and would otherwise receive institutional level care based on an approved application for Medicaid, but for the application of the penalty period, whichever is later.

(a) If a previous penalty period is in effect on the date that the new penalty period begins, the new penalty period begins immediately after the previous one ends.

(b) The eligibility agency shall apply penalty periods consecutively so that they do not overlap.

(5) If assets are transferred during any penalty period, the penalty period for those transfers does not begin until the previous penalty period expires.

(6) If a transfer occurs, or the eligibility agency discovers an unreported transfer after the agency approves an individual for Medicaid for nursing home or home and community-based services, the penalty period shall begin on the first day of the month after the month that the individual transfers the asset.

(7) The statewide average private-pay rate for nursing home care in Utah that the eligibility agency shall use to calculate the penalty period for transfers is $4,526 per month.

(8) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred may only be used to benefit the spouse, disabled child, or disabled individual, and must be actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in the agreement that benefit another person at any time nullify the sole benefit provision. An excluded trust established under 42 U.S.C. 1396p(d)(4) that meets the criteria in Section R414-305-7 does not have to meet the actuarially sound test.

(9) The eligibility agency may not impose a penalty period if the total value of a whole life insurance policy is:

(a) irrevocably assigned to the State;

(b) the recipient is the owner of and the insured in the policy; and

(c) no further premium payments are necessary for the policy to remain in effect.

(d) When the individual dies, the State shall distribute the benefits of the policy as follows:

(i) The State may distribute up to $7,000 to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and the burial and funeral funds for the individual cannot exceed $7,000;

(ii) The State may distribute an amount that does not exceed the total amount of previously unreimbursed medical assistance correctly paid on behalf of the individual;

(iii) The State may distribute to a remainder beneficiary named by the individual any amount that remains after payments are made as defined in Subsection R414-305-9(9)(d)(i) and Subsection R414-305-9(9)(d)(ii).

(10) If the eligibility agency determines that a penalty period applies for an otherwise eligible institutionalized person, the agency shall notify the individual that the Department may not pay the costs for nursing home or other long-term care services during the penalty period. The notice shall include when the penalty period begins and ends.

(a) The individual may request a waiver of the penalty period based on undue hardship.

(b) The individual must send a written request for a waiver of the penalty period due to undue hardship to the eligibility agency within 30 days of the date printed on the penalty period notice.

(c) The request must include an explanation of why the individual believes undue hardship exists.

(d) The eligibility agency shall make a decision on the undue hardship request within 30 days of receipt of the request.

(11) An individual who claims an undue hardship as a result of a penalty period for a transfer of resources must meet both of the following conditions:

(a) The individual or the person who transferred the resources may not access the asset immediately; however, the eligibility agency shall require the individual to exhaust all reasonable means including legal remedies to regain possession of the transferred resource;

(i) The agency may determine that it is unreasonable to require the individual to take action if a knowledgeable source confirms that the individual's efforts cannot succeed;

(ii) The agency may determine that it is unreasonable to require the individual to take action based on evidence that the individual's action is more costly than the value of the resource; and

(b) Application of the penalty period for a transfer of resources deprives the individual of medical care, endangers the individual's life or health, or deprives the individual of food,

clothing, shelter, or other necessities of life.

(12) If the eligibility agency waives the penalty period based on undue hardship, the agency shall notify the individual. The Department shall provide Medicaid coverage on the condition that the individual takes all reasonable steps to regain the transferred assets. The eligibility agency shall notify the individual of the date that the individual must provide verifications of the steps taken. The individual must, within the time frames set by the agency, verify to the agency all reasonable actions. The agency shall review the undue hardship waiver and the actions of the individual to try to regain the transferred assets. The time period for the review may not exceed six months. Upon review, the agency shall decide whether:

(a) The individual must take additional steps and whether undue hardship still exists, in which case the agency shall notify the individual of the continuation of undue hardship and the need to take additional steps to recover the assets;

(b) The individual has taken all reasonable steps without success, in which case the agency shall notify the individual that it requires no further action. If the individual continues to meet eligibility criteria, the eligibility agency may not apply the penalty period; or

(c) The individual has not taken all reasonable steps, in which case the eligibility agency shall discontinue the undue hardship waiver. The eligibility agency shall then apply the penalty period and the individual is responsible to repay Medicaid for services and benefits that the individual received during the months that the undue hardship waiver was in place.

(13) Based on a review of the facts about what happened to the assets, whether the individual has taken reasonable steps to recover or regain the assets, the results of those steps, and the likelihood that additional steps will prove unsuccessful or too costly, the eligibility agency may determine that the individual cannot recover or regain the transferred resource. If the agency decides that the assets cannot be recovered and that applying the penalty period may result in undue hardship, the agency may not apply a penalty period or shall end a penalty period that has already begun.

(14) The eligibility agency shall base its decision that undue hardship exists upon the medical condition and the financial situation of the individual. The agency shall compare the income and resources of the individual, individual's spouse, and parents of an unemancipated individual to the cost of providing medical care and daily living expenses to decide whether the financial situation creates an undue hardship. The agency shall send written notice of its decision on the undue hardship request. The individual has 90 days from the date printed on the notice of decision to file a request for a fair hearing.

(15) The eligibility agency shall consider the portion of an irrevocable burial trust that exceeds $7,000 a transfer of resources. The agency shall deduct the value of any fully paid burial plot from the burial trust first before determining the transferred amount.

R414-305-10. Qualified Medicare Beneficiary, Specified Low-Income Medicare Beneficiary, and Qualifying Individual Resource Provisions.

(1) To determine eligibility for Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, and Qualifying Individuals, the eligibility agency shall apply the resource limit defined in 42 U.S.C. Sec.1396d(p)(1)(C).

(2) The eligibility agency shall determine countable resources in accordance with the provisions of Section R414-305-3.

R414-305-11. Treatment of Annuities.

(1) An individual must report any annuities in which either the individual or the individual's spouse has any interest at application for Medicaid, at each review, and as part of the change reporting requirements. Parents of a minor individual must report any annuities in which the child or either of the parents has an interest.

(2) For annuities purchased after February 7, 2006, in which the individual or spouse has an interest, the provisions in 42 U.S.C. 1396p(c) apply. The eligibility agency shall treat annuities purchased after February 7, 2006, which do not meet the requirements of 42 U.S.C. 1396p(c), as a transfer of assets for less than fair market value.

(3) With the exception of annuities that meet the criteria in Subsection R414-305-11(4), the eligibility agency shall count annuities in which the individual, the individual's spouse or a minor individual's parent has an interest as an available resource to determine Medicaid eligibility, whether they are irrevocable or non-assignable. The agency shall presume that a market exists to purchase annuities or the stream of income from annuities, which make them available resources. The individual may rebut the presumption that the annuity may be sold by providing evidence that the individual has been rejected by several entities in the business of purchasing annuities or the revenue stream from annuities, in which case, the agency may not consider the annuity as an available resource.

(4) For individuals eligible under the aged, blind, or disabled category of Medicaid, the eligibility agency shall exclude an annuity from countable resources in the form of the periodic payment if it meets the following requirements.

(a) The annuity is either an individual retirement annuity according to Section 408(b) of the Internal Revenue Code (IRC) of 1986 or a deemed Individual Retirement Account under a qualified employer plan according to Section 408(q) of the IRC; or

(b) The annuity is purchased with the proceeds from one of the following:

(i) As described in Sections 408(a), (c), or (p) of the IRC, a traditional IRA, accounts or trusts which are treated as a traditional IRA, or a simplified retirement account;

(ii) A simplified employee pension (Section 408(p) of the IRC); or

(iii) A Roth IRA (Section 408A of the IRC); and

(c) The annuity is irrevocable and non-assignable, the individual who was the owner of the retirement account or plan is receiving equal periodic payments at least quarterly with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy.

(d) If the individual purchases or annuitizes the annuities after February 7, 2006, the annuities must name the State as the preferred remainder beneficiary in the first position upon the individual's death, or as secondary remainder beneficiary after a surviving spouse or minor or disabled child.

(5) For family-related medically needy Medicaid programs, the eligibility agency shall count all annuities as resources if the individual can access the funds, even if the annuities qualify as retirement funds or plans.

(6) Annuities purchased on or after February 8, 2006, in which the individual or the spouse has an interest are a transfer of assets for less than fair market value unless the annuity names the State as the preferred remainder beneficiary in the first position, or in the second position after a surviving spouse, or a surviving minor or disabled child, up to the amount of medical assistance paid on behalf of the institutionalized individual.

(a) The State shall give individuals who have purchased annuities before applying for long-term care Medicaid, 30 days to request the issuing company to name the State as the preferred remainder beneficiary and to verify that fact to Medicaid.

(b) The individual must verify to the eligibility agency that the change in beneficiary has been made by the date requested

by the agency.

(c) If the change of beneficiary is not completed and verified, the annuities are a transfer of resources and the eligibility agency shall apply the penalty period. If the eligibility agency has approved institutional Medicaid coverage pending verification, Medicaid coverage for long-term care ends and the penalty period begins the day after the closure date.

(7) The eligibility agency shall treat an annuity purchased before February 8, 2006, as an annuity purchased on or after February 8, 2006, if the individual or spouse take any actions that change the course of payments to be made or the treatment of the income or principal of the annuity. These actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, or other similar actions. Routine changes and automatic events that do not involve an action or decision from the individual or spouse do not cause an annuity purchased before February 8, 2006, to be treated as one purchased on or after February 8, 2006.

(8) If a penalty period for a transfer of assets begins because the individual or the individual's spouse has not changed an annuity to name the State as the preferred remainder beneficiary of the annuity, the penalty period for a transfer does not end until the individual completes and verifies the change of beneficiary to the eligibility agency. The eligibility agency may not rescind the penalty period.

(9) If the individual or spouse does not provide all information about annuities for which they have an interest by the requested due date, the eligibility agency shall deny the application. The individual may reapply, but may not protect the original application date.

(10) The issuer of the annuity shall inform the eligibility agency of any change in the amount of income or principal being withdrawn from the annuities, any change of beneficiaries, or any sale or transfer of the annuity. The issuer of the annuity shall also inform the agency if a surviving spouse or a surviving minor or disabled child attempts to transfer the annuity or any portion of the annuity to someone other than the agency.

KEY: Medicaid, resources
September 13, 2017 26-1-5
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Pub. L. No. 111-148

R428. Health, Center for Health Data, Health Care Statistics.
R428-13. Health Data Authority. Audit and Reporting of Health Plan Performance Measures.
R428-13-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a, Utah Code, and in accordance with the Utah Health Care Performance Measurement Plan.

R428-13-2. Purpose.

This rule establishes the process for the collection of HEDIS data from Utah carriers that are needed to promote informed consumer choice in plan selection and measure the quality of care provided to enrollees of Utah carriers.

R428-13-3. Submission of Performance Measures.

(1) Each carrier shall compile and submit HEDIS data for the preceding calendar year to the Office by July 1 of each year.

(2) By January 1 of each year, each carrier shall submit to the Office a plan for creating and providing HEDIS data for the preceding calendar year.

(3) Each carrier shall contract with an independent audit agency certified by the NCQA to verify the HEDIS data using NCQA HEDIS specifications prior to submitting data to the Office.

(4) Each carrier may employ the rotation strategy for HEDIS measures developed and updated by NCQA.

(5) If a carrier presents "Not Reported (NR)" for required measures, it must document why it did not report the required measure.

(6) Each carrier shall cause its contracted audit agency to submit a copy of the audit agency's final report by August 15 of the submission year to the Office. The final report shall incorporate the carrier's comments.

R428-13-4. Exemptions.

(1) Notwithstanding the requirements in Subsection R428-2-11(2), a carrier that cannot comply with the requirements of this rule must request an exemption by January 1 of the relevant submission year.

(2) A carrier may request an exemption from this rule if the carrier did not operate in Utah for the reporting year, if the number of covered lives is too low for HEDIS standards, or for other similarly prohibitive circumstances beyond the carrier's control.

KEY: health, health planning, health policy
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Notice of Continuation September 19, 2017

R432. Health, Family Health and Preparedness, Licensing.
R432-600. Abortion Clinic Rule.
R432-600-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-600-2. Definitions.

(1) The terms used in these rules are defined in R432-1-3.

(2) An "abortion clinic" means a facility, including a physician's office but not including a general acute or a specialty hospital that performs abortions.

R432-600-3. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of abortion clinics for providing safe and effective facilities and services.

R432-600-4. Licensure.

(1) A license is required to operate an abortion clinic. The licensee and facility shall maintain documentation that they are members in good standing with the National Abortion Federation or the Abortion Care Network which is required for licensure.

(2) An abortion clinic may be licensed as a Type I facility if the facility:

(a) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy; and

(b) does not perform abortions, as defined in section 76-7-301, after the first trimester of pregnancy.

(3) An abortion clinic may be licensed as a Type II facility if the facility:

(a) performs abortions, as defined in Section 76-7-301, after the first trimester of pregnancy; or

(b) performs abortions, as defined in section 76-7-301, during the first trimester of pregnancy and after the first trimester of pregnancy.

(4) Abortion clinics must comply with requirements of Title 76, Chapter 7, Part 3 Abortion.

R432-600-5. Construction.

(1) Each facility shall conform with the requirements of R432-4-1 through R432-4-22, with the exception of R432-4-8(1)(b).

(2) Each facility shall conform to the functional, space, and equipment requirements of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, sections 3.1 and 3.2 with the following exceptions.

(a) Section 3.1-6.1.1 Vehicular Drop-Off and Pedestrian Entrance is deleted;

(b) Section 3.1-7.1.1.1 NFPA 101 is deleted;

(c) Section3.1-7.2.2.1 Corridor Width is deleted;

(d) Section 3.1-7.2.2.3(1)(b) is deleted;

(e) Section 3.1-8.2.6 Heating Systems and Equipment is deleted;

(f) 3.2-6.2.4 Multipurpose Rooms is deleted; and

(g) Further modifications or deletion of space and functional requirements may be made with Departmental written approval.

(3) Treatment rooms shall be a minimum of 110 square feet exclusive of vestibules or cabinets.

R432-600-6. Organization.

(1) Each clinic shall be operated by a licensee. If the licensee is other than a single individual, there shall be an organized functioning governing body to assure accountability.

(2) The licensee shall be responsible for the organization, management, operation, and control of the facility.

(3) Responsibilities shall include at least the following:

(a) Comply with all applicable federal, state and local laws, rules and requirements;

(b) Adopt and institute by-laws, protocols, policies and procedures relative to the operation of the clinic;

(c) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility bylaws, policies and procedures, and for the overall management of the facility;

(d) Appoint, in writing, a qualified medical director to be responsible for clinical services;

(e) Establish a quality assurance committee in conjunction with the medical staff;

(f) Secure contracts for services not provided directly by the clinic;

(g) Receive and respond to the semi-annual inspection report by the Department;

(h) Compile statistics on the distribution of the informed consent material as required in Section 76-7-313.

R432-600-7. Clinic Protocols, Policies, and Procedures.

(1) The licensee shall develop and implement written policies and procedures with the medical director and the administrator in accordance with State law including:

(a) Patient eligibility criteria;

(b) Physician competency criteria;

(c) Informed consent;

(d) For Type II Clinics, policy must indicate a limit on the number of weeks within the second trimester of pregnancy during which abortions can be safely performed in the clinic;

(e) For Type II Clinics, an emergency treatment transfer plan which shall include:

(i) patient acknowledgment of the transfer plan;

(ii) notification to the receiving hospital when a patient requires emergency transfer;

(iii) explanation of how information will be provided to receiving hospital for proper care and treatment of the individual transferred;

(iv) plan for security and accountability of the personal effects of the individual transferred; and

(v) mode of transportation for the transfer.

(f) If an abortion is performed when an unborn child is sufficiently developed to have any reasonable possibility of survival outside its mother's womb, the medical procedure used must be that which, in the best medical judgment of the physician, will give the unborn child the best chance of survival. (Refer to Section 76-7-307.)

(g) Pre and post counseling;

(h) Clinic operational functions;

(i) Patient care and patient rights policies;

(j) A quality assurance committee;

(k) Ongoing relevant training program for all clinic personnel;

(l) Emergency and disaster plans;

(m) Fire evacuation plans.

R432-600-8. Administrator.

(1) Each facility shall designate, in writing, an administrator who shall have sufficient freedom from other responsibilities to be on the premises of the clinic a sufficient number of hours in the business day to permit attention to the management and administration of the facility.

(2) The administrator shall designate a person to act as administrator in his or her absence. This person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being. It is not the intent to permit a de facto administrator to supplant or replace the designated facility administrator.

(3) The administrator shall be 21 years of age or older.

(4) The administrator shall be experienced in administration and supervision of personnel, and shall be

knowledgeable about the medical aspects of abortions to interpret and be conversant in medical protocols.

(5) The administrator's responsibilities shall be included in a written job description.

(6) Responsibilities shall include at least the following:

(a) Develop and implement facility policies and procedures;

(b) Maintain an adequate number of qualified and competent staff to meet the needs of clinic patients;

(c) Develop clear and complete job descriptions for each position;

(d) Implement recommendations made by the quality assurance committee;

(e) Notify the Department of Health, Bureau of Health Facility Licensing within 7 days in the event of the death of a patient;

(f) Notify appropriate authorities when a reportable communicable disease is diagnosed;

(g) Administrator will ensure that a fetal death certificate is filed as required in Section 26-2-14, for each fetal death of 20 weeks gestation or more calculated from the date the last normal menstrual period began to date of delivery;

(h) Review all incident and accident reports and document what action was taken.

R432-600-9. Medical Director.

(1) The licensee of the abortion clinic shall retain, by formal agreement, a physician to serve as medical director.

(2) The medical director shall meet the following qualifications:

(a) Be currently licensed to practice medicine in Utah;

(b) Have sufficient training and expertise in abortion procedures to enable supervision of the scope of service offered by the clinic;

(c) Be a diplomat of the American Board of Obstetrics and Gynecology or the American Board of Surgery; or submit evidence to the Department that other training and experience will qualify her or him for admission to an examination by either board; or

(d) Be certified by the American College of Osteopathic Obstetricians and Gynecologists or the American Board of Osteopathic Surgeons; or submit evidence to the Department that his training and experience qualifies him or her for admission to an examination by the College or Board;

(e) Be a member in good standing with the National Abortion Federation or the Abortion Care Network.

(3) The medical director shall have overall responsibility for the administration of medication and treatment delivered in the facility. Applicable laws relating to abortions, professional licensure acts and clinic protocols shall govern both medical staff and employee performance.

(4) The medical director shall be responsible for at least the following:

(a) To develop and review facility protocols;

(b) To establish competency criteria for staff physicians and personnel, including training in abortion procedures and abortion counseling;

(c) To supervise the performance of the medical staff;

(d) To serve as a member of the clinic's quality assurance committee;

(e) To act as consultant to the director of nursing;

(f) Ensure that a physician's report is filed as required in Section 76-7-313, for each abortion performed.

R432-600-10. Health Surveillance.

(1) The Facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and clients commensurate with the service offered.

(2) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(3) The health inventory shall obtain at least the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(b) condition which may prevent the employee from performing certain assigned duties satisfactorily;

(4) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702. Communicable Disease Rules;

(5) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for control of Tuberculosis;

(a) The licensee shall ensure that all employees are skin tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(6) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-600-11. Personnel.

(1) The Administrator shall employ a sufficient number of professional and support staff who are competent to perform their respective duties, services and functions.

(a) All staff shall be licensed, certified or registered as required by the Utah Department of Commerce.

(b) Copies shall be maintained for Department review that all licenses, registration and certificates are current.

(c) Failure to ensure that all personnel are licensed, certified or registered may result in sanctions to the facility license.

(2) There shall be planned, documented, in-service training program held regularly for all facility personnel.

(3) The training program shall address all clinic protocols and policies.

(4) All clinic personnel shall have access to the facility's policies and procedures manuals and other information necessary to effectively perform assigned duties and carry out responsibilities.

R432-600-12. Contracts.

(1) The licensee shall make arrangements for professional and other required services not provided directly by the facility. If the facility contracts for services, there shall be a signed, dated agreement that details all services provided.

(2) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) Copy of the professional license, if applicable.

R432-600-13. Quality Assurance.

(1) The administrator, in conjunction with the medical staff, shall establish a quality assurance committee and program. This committee shall review regularly clinic operations, protocols, policies and procedures, incident reports, infection control, patient care policies and safety.

(2) The committee shall include a representative from the clinic administration, a physician, and a nurse.

(3) The committee shall meet at least quarterly and keep minutes of the proceedings. The minutes shall be available for review by the Department.

(4) The committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the licensee.

R432-600-14. Emergency and Disaster.

(1) Each facility has the responsibility to assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include but is not limited interruption of public utilities, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator shall be in charge of facility operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the facility to relieve subordinates and take charge during the emergency.

(3) The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.

(a) This plan shall be in writing and shall be distributed or made available to all facility staff to assure prompt and efficient implementation.

(b) The plan shall be reviewed and updated at least annually by the administrator and the licensee.

(4) The names and telephone numbers of clinic staff, emergency medical personnel, and emergency service systems shall be posted.

(5) The facility's emergency plan shall address the following:

(a) Evacuation of occupants to a safe place within the facility or to another location;

(b) Delivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(d) An inventory of available personnel, equipment, and supplies and instructions on how to acquire additional assistance;

(e) Assignment of personnel to specific tasks during an emergency;

(f) Names and telephone numbers of on-call physicians and staff shall be available;

(g) Documentation of emergency events.

(6) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan shall identify evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department and shall be posted throughout the facility.

(b) The written fire emergency plan shall include fire-containment procedures and how to use the facility alarm systems and signals.

(c) Fire drills and documentation shall be in accordance with R710-4, State of Utah Fire Protection Board. The actual evacuation of patients during a drill is optional.

R432-600-15. Patients' Rights.

(1) The clinic shall provide informed consent material (see Section 76-7-305.5) to any patient or potential patient.

(2) Written policies regarding the rights of patients shall be made available to the patient, public, and the Department upon request.

(3) Each patient admitted to the facility shall have the following rights:

(a) To be fully informed, prior to or at the time of admission and during stay, of these rights and of all facility rules that pertain to the patient;

(b) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of any charges for which the patient may be liable;

(c) To refuse to participate in experimental research;

(d) To refuse treatment and to be informed of the medical consequences of such refusal;

(e) To be assured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(f) To be treated with consideration, respect, and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-600-16. General Patient Care Policies.

(1) Each patient shall be treated as an individual with dignity and respect.

(2) Each clinic shall develop and implement patient care policies to be reviewed annually by the administrator or designee.

(a) Patient care policies shall be developed and revised through patient-care conferences with all professionals involved in patient care.

(b) Admission and discharge policies shall be included in general patient care policies.

(3) The facility shall have a policy to notify next of kin in the event of serious injury to, or death of, the patient.

(4) Each patient shall be under the care of a physician who is a member of the clinic staff.

R432-600-17. Nursing Services.

(1) Each facility shall provide nursing services commensurate with the needs of the patients served.

(2) All non-medical patient services shall be under the general direction of the director of nursing, except as specifically exempted by facility policy.

(3) Each Type II clinic shall employ and designate in writing a director of nursing who will be responsible for the organization and functioning of the nursing staff and related service.

(a) The director of nursing shall be a registered nurse who has academic or post graduate training acceptable to the medical director.

(b) The director of nursing in consultation with the medical director shall plan and direct the delivery of nursing care by nursing staff.

(4) Nursing service personnel shall assist the physician, plan and deliver nursing care, treatments, and procedures commensurate with the patient's needs and clinic protocols.

(5) The facility shall provide adequate equipment in good working order to meet the needs of patients.

(6) Disposable and single-use items shall be properly disposed after use.

R432-600-18. Pharmacy Service.

(1) There shall be written policies and procedures, approved by the medical director and administrator, to govern the acquisition, storage, and disposal of medications.

(2) There shall be provision for the supply of necessary drugs and biologicals on a prompt and timely basis.

(3) The clinic shall obtain reference material containing monographs on all drugs used in the facility. The drug monographs shall include generic and brand names, available strengths, dosage forms, indications and side effects, and other pharmacological data.

(4) All medications, solutions, and prescription items shall be kept in a secure controlled storage area and separate from non-medicine items.

(5) An accessible emergency drug supply shall be maintained in the facility.

(a) Specific drugs and dosages to be included in the emergency drug supply shall be approved by the medical director.

(b) Contents of the emergency drug supply shall be listed on the outside of the container.

(c) The use and regular inventory of the contents shall be documented by nursing staff.

(6) Medications stored at room temperature shall be maintained within 59 degrees - 80 degrees F (15 degrees to 30 degrees C). Refrigerated medications shall be maintained within 36 degrees - 46 degrees F (2 degrees to 8 degrees C).

(7) Medications and other items that require refrigeration shall be stored securely and segregated from food items.

R432-600-19. Laboratory and Radiology Services.

(1) The facility shall make provisions, as appropriate, for Laboratory and Radiology services.

(2) There shall be a valid order, documented in the patients medical record, from a physician or a person licensed to prescribe such services.

(3) Services shall be performed by a qualified licensed provider.

(4) If the facility provides its own laboratory service, these services shall comply with R432-100-23 in the General Hospital Facility Rules.

(5) If the facility provides its own radiology services, these shall comply with R432-100-22.

(6) If laboratory and radiology services are not provided directly, provision shall be made for such services. Reports or results shall be reported promptly to the attending physician and documented in the patient's medical record.

R432-600-20. Anesthesia Services.

Anesthesia services provided in the clinic shall comply with the General Hospital Rules R432-100-15 and Utah Code 76-7-305.

R432-600-21. Medical Records.

(1) Medical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval. There shall be written policies and procedures to accomplish these purposes.

(2) A permanent individual medical record shall be maintained for each patient.

(3) All entries shall be permanent and capable of being photocopied. Entries must be authenticated including date, name or identified initials, and title of the person making the entry.

(4) Records shall be kept for all patients admitted or accepted for treatment and care. Records shall be kept current and shall conform to good medical and professional practice based on the service provided to each patient.

(5) All records of discharged patients shall be completed and filed as soon as possible or within 30 days of discharge.

(6) Each patient's medical record shall include the following:

(a) An admission record (face sheet) including the patient's name; age; date of admission; name, address, and telephone number of physician and responsible person;

(b) Reports of physical examinations, laboratory tests and X-rays prescribed and completed, including ultrasound reports;

(c) Signed and dated physician orders for drugs and treatments;

(d) Signed and dated nurse's notes regarding the care of the patient. The notes shall include vital signs, medications, treatments and other pertinent information;

(e) Discharge summary which contains a brief narrative of conditions and diagnoses of the patient and final disposition;

(f) The pathologist's report of human tissue removed during an abortion;

(g) All information indicated in Section 76-7-313.

(7) Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(8) All patient records shall be retained within the clinic upon change of ownership.

(9) Provision shall be made for filing, safe storage, security, and easy accessibility of medical records.

(10) Medical record information shall be confidential. There shall be written procedures for the use and removal of medical records and the release of patient information.

(a) Information may be disclosed only to authorized persons in accordance with federal and state laws, and clinic policy.

(b) Requests for information which may identify the patient (including photographs) shall require the written consent of the patient.

R432-600-22. Housekeeping Services.

(1) There shall be adequate housekeeping services to maintain a clean, sanitary, and healthful environment in the facility.

(2) Written housekeeping policies and procedures shall be developed and implemented by each facility, and reviewed and updated as necessary.

(3) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

(4) Housekeeping equipment shall be for institutional use and properly maintained.

(5) Cleaning solutions for floors shall be prepared in proper strengths according to the manufacturer's instructions and be checked to insure that the proper germicidal concentrations are maintained.

(6) There shall be sufficient number of noncombustible trash containers. Lids shall be provided where appropriate.

(7) Storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, shall be stored in a locked area to prevent unauthorized access. Toilet rooms shall not be used as storage places.

R432-600-23. Laundry Services.

(1) Each facility shall have provisions for storage and processing of clean and soiled linen as required for patient care.

(2) Processing may be done within the facility, in a separate building or in a commercial or shared laundry.

(3) Each facility shall develop and implement policies and procedures relevant to operation of the laundry.

(4) Clean linen shall be stored, handled, and transported in a manner to prevent contamination.

(a) Clean linen shall be stored in clean ventilated closets, rooms, or alcoves used only for that purpose.

(b) Clean linen shall be covered if stored in alcoves and transported through the facility.

(c) Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

(d) Linens shall be maintained in good condition.

(e) A supply of clean washcloths and towels shall be provided and available to staff to meet the care needs of patients.

(5) Soiled linen shall be handled, stored and processed in a manner that will prevent the spread of infections.

(a) Soiled linen shall be sorted in a separate room by

methods affording protection from contamination, according to facility policy and applicable rules.

(b) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors, areas occupied by patients, and precludes cross contamination of clean linens.

(6) Laundry chutes shall be maintained in a clean sanitary state.

R432-600-24. Maintenance Services.

(1) There shall be adequate maintenance service to ensure that the facility, equipment, and grounds are maintained in a clean and sanitary condition and in good repair at all times, in accordance with manufacturer specifications for the safety and well-being of patients, staff, and visitors.

(2) The administrator shall employ or contract with a person qualified by experience and training to be in charge of facility maintenance.

(3) The facility shall develop and implement a written maintenance program, including preventive maintenance, to ensure continued operation and sanitary practices throughout the facility.

(4) All buildings, fixtures, equipment and spaces shall be maintained in operable conditions.

(5) A pest control program shall be conducted to ensure the facility is free from vermin and rodents.

(6) Equipment used in the clinic shall be approved by Underwriter's Laboratory and meet all applicable Utah Occupational Safety and Health Act requirements in effect at the time of purchase.

(7) Electrical systems including appliances, cords, equipment, call lights, and switches shall be maintained to guarantee safe functioning and compliance with the National Electrical Code.

(8) There shall be regular inspections, to clean or replace all filters installed in heating, air conditioning, and ventilation systems, to maintain the systems in operating condition.

R432-600-25. Emergency Electric Service.

(1) The clinic shall make provision for emergency electrical power to provide lighting and power to critical areas essential for patient safety in the event of an interruption of normal electrical power service.

(2) The method utilized for emergency electrical power is subject to Departmental review and approval.

(3) There shall be provision for emergency exit lighting according to NFPA 101.

(4) Flashlights shall be available for emergency use by staff.

(5) All emergency electrical power systems shall be maintained in operating condition and tested as follows:

(a) Emergency generators shall be tested in accordance with NFPA 99.

(b) Transfer switches and battery operated equipment shall be functionally tested every 30 days and load tested at least annually, for 90 minutes.

(6) A written record of inspection, performance, test period, and repair of the emergency electrical system shall be maintained on the premises for review.

R432-600-26. Storage and Disposal of Solid Wastes.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-600-27. Oxygen.

If oxygen is utilized:

(1) Provision shall be made for safe handling and storage of oxygen according to the NFPA 101, Life Safety Code and referenced NFPA standards.

(2) Piped oxygen systems shall be tested and installed in accordance with NFPA 99.

(3) A written report shall be filed with the Utah Department of Health as follows:

(a) Upon completion of initial installation;

(b) Whenever changes are made to a system; and

(c) Whenever the integrity of the system has been breached.

R432-600-28. Lighting.

(1) At least 30 foot-candles of light shall illuminate reading, patient care (bed level) and working areas in patient treatment areas and not less than 20 foot-candles of light shall be provided in the rest of the room.

(2) All accessible storeroom, stairway, ramp, exit and entrance areas shall be illuminated by at least 20 foot-candles of light at floor level.

(3) All corridors shall be illuminated with a minimum of 20 foot-candles of light at floor level.

(4) Other areas shall be provided with the following minimum foot-candles of light at working surfaces:

(a) Operating rooms 50 Foot-candles

(b) Medication preparation areas 50 foot-candles

(c) Charting areas 50 foot-candles

(d) Reading rooms 50 foot-candles

(e) Laundry areas 20 foot-candles

(f) Bath and shower rooms 20 foot-candles

R432-600-29. Water Supply.

(1) Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.

(2) Backflow prevention devices shall be maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.

(3) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by patients. The facility shall maintain hot water delivered to patient care areas at temperature between 105 degrees and 120 degrees F.

(4) There shall be grab bars at each toilet, bathtub, and shower used by patients.

(5) Toilet, hand washing facilities, shall be maintained in operating condition and in the number and types specified in construction requirements.

R432-600-30. Smoking Policy.

The smoking policy shall comply with the "Utah Clean Air Act", Title 26, Chapter 38, and Section 20.7.4 of the Life Safety Code.

R432-600-31. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities

September 13, 2017	**26-21-5**
Notice of Continuation November 9, 2015	**26-21-6**
	26-21-16

R460. Housing Corporation, Administration.
R460-1. Authority and Purpose.
R460-1-1. Authority.

The rules under R460 are promulgated under authority granted to the Utah Housing Corporation under Sections 63H-8-301 and 63H-8-302.

R460-1-2. Purpose.

The rules under R460 govern the activities of the Utah Housing Corporation and the public with whom it deals, to carry into effect its powers and purposes and the conduct of its operations.

KEY: housing finance
1990 63H-8-301
Notice of Continuation September 15, 2017 63H-8-302

R460. Housing Corporation, Administration.
R460-2. Definitions of Terms Used Throughout R460.
R460-2-1. Terms Which are Defined in Section 63H-8-103.

(1) Bonds;
(2) Corporation;
(3) Financial assistance;
(4) Housing sponsor;
(5) Low and moderate income persons;
(6) Mortgage lender;
(7) Mortgage loan;
(8) Mortgage;
(9) Residential housing;
(10) State.

R460-2-2. Additional Defined Terms.

(1) "Act" means the Utah Housing Corporation Act, set forth in Section 63H-8-1 et. seq.

(2) "ADA coordinator" means UHC's president or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(3) "Code" means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

(4) "Complainant" means a person who has a disability and who alleges in a complaint filed with UHC according to this rule, that an act of discrimination occurred by UHC, and satisfies one or more of the following:

(a) who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by UHC;

(b) who would otherwise be an eligible applicant for vacant UHC employment positions;

(c) who is an employee of UHC.

(5) "Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Federal" means of, pertaining to, or designating the government of the United States of America.

(7) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, sleeping, standing, sitting, reaching, lifting, bending, reading, concentrating, thinking, communicating, interacting with others, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(8) "Multifamily" means a residential housing project consisting of five or more rental dwelling units located on a single or multiple tract(s) of land.

(9) "Participant" means a person, natural or otherwise, who is involved in or has a critical influence on or substantive control over a transaction which involves a UHC program, including but not limited to any of the following:

(a) appraisers and inspectors;
(b) real estate agents and brokers;
(c) management and marketing agents;
(d) attorneys;
(e) title insurance companies;
(f) escrow and closing agents;
(g) loan officers or other agents of lenders;
(h) project owners;
(i) developers, builders and contractors involved in the construction or rehabilitation of properties financed by UHC, or receiving UHC funds, or allocations of Federal or State resources directly or indirectly;
(j) individuals who are applicants for or borrowers under UHC mortgage loans, or members of their families;
(k) employees or agents of any of the above.

(10) "Single-Family" means residential housing consisting of one dwelling unit occupied by the fee simple owner of the dwelling unit.

(11) "UHC" means Utah Housing Corporation.

KEY: housing finance
March 9, 2016 63H-8-301
Notice of Continuation September 15, 2017

R460. Housing Corporation, Administration.
R460-3. Programs of UHC.
R460-3-1. Single-Family Program.

(1) Eligible mortgage lender.

(a) To be eligible to participate in the single-family program, a mortgage lender must have as one of its principal purposes the origination of mortgage loans in its usual and regular course of business.

(b) UHC may establish criteria that mortgage lenders must meet relating to approved mortgagee status by the Federal Housing Administration, Rural Housing Service or Department of Veterans Affairs, the financial condition of the mortgage lender, the number of mortgage loan originations during a period specified by UHC, the length of time a mortgage loan origination office has been maintained in the state, seller/servicer approval by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and other criteria as UHC deems necessary to maintain a safe and sound program and to establish that mortgage loans are a part of a mortgage lender's usual and regular business activities and that the mortgage lender possesses the capability to make and to have adequate financial resources to fund mortgage loans.

(c) UHC may require that mortgage lenders, from time to time, furnish to UHC evidence as UHC may request to confirm a mortgage lender's eligibility to participate in the single-family program.

(d) A mortgage lender shall employ and maintain qualified personnel to carry out the obligations arising under contracts with UHC.

(e) All transactions between a mortgage lender and UHC shall be subject to the relevant single-family program contract documents which may include the following: participation agreement, selling supplement, mortgage credit certificate program guide, mortgage purchase agreement ("MPA"), mortgage credit certificate request and reservation ("MCC request"), notice of availability of funds, MPA request, and other documents deemed necessary by UHC ("Program Documents").

(2) Mortgage purchase agreement request; mortgage purchase agreement; mortgage credit certificate request and reservation.

(a) UHC may distribute to mortgage lenders via any electronic, digital, or written means, any interest rate and/or program changes affecting the single-family program.

(b) Mortgage lenders may submit one or more mortgage purchase agreement or MCC requests to UHC via electronic, digital or written means as specified by UHC, in which an amount of funds is requested for a specific mortgage loan or MCC that the mortgage lender is processing.

(c) UHC may require that each mortgage purchase agreement or MCC request submitted by a mortgage lender be accompanied by an application or other fee in an amount specified by UHC in its Program Documents. The fee shall not be refunded or accrue interest payable by UHC, unless otherwise specified by UHC in the Program Documents.

(d) Upon receipt of a mortgage purchase agreement or MCC request, UHC may deliver to the mortgage lender 1) a mortgage purchase agreement confirming UHC's commitment to purchase the specified mortgage loan or 2) an MCC reservation confirming UHC's commitment to issue an MCC for the requested amount. The mortgage purchase agreement or MCC request shall terminate automatically if the mortgage lender fails to deliver all necessary Program Documents with respect to the mortgage loan or MCC to UHC on or prior to the date specified in the Program Documents.

(3) Single-family mortgage loans.

(a) From time to time, UHC may develop individualized single-family mortgage programs designed to meet the needs of certain populations. In such cases, UHC shall establish maximum fees that may be charged or collected, final mortgage delivery date, interest rate, and loan term. Fee requirements shall be uniformly applied to all mortgage lenders, without preference of one mortgage lender over another.

(b) All mortgage loans shall be made to finance single-family residential housing located in the state which conform to the requirements of the single-family mortgage program or any other requirements specified in the Program Documents.

(c) UHC may provide priority allocations to make mortgage financing available to persons qualified for any of UHC's single-family programs or in targeted, rural, inner city or other areas experiencing difficulty securing mortgage loans to make housing available to persons of low and moderate income.

(d) Each mortgage loan purchased by UHC shall conform to the credit underwriting, property valuation, hazard insurance, title insurance, mortgage insurance, security and collateralization, and all other requirements of the Program Documents. Closings or deliveries must occur on or before the date established in Program Documents. UHC shall have the right to decline to finance any mortgage loan if, in the reasonable opinion of UHC, the mortgage loan does not meet all requirements of the Program Documents.

(4) Income limits of borrowers.

Income limits for low and moderate income persons eligible as borrowers for UHC financing are based on area or state median income as determined and published by the U.S. Department of Housing and Urban Development (HUD). UHC's president is authorized to establish income limits of UHC's single family programs and such limits shall not exceed 140% of area or state median income as determined and published by HUD. UHC shall post income limits on its website, incorporate the limits as terms of the Program Documents, and shall make information concerning the limits available to all interested persons. Income limits may vary based on, but not limited to, loan program, household size, county, targeted area, source and availability of funds, and risk to UHC.

(5) Acquisition cost limits.

When loan funding sources have federal regulations that require the establishment of acquisition cost limits, UHC's president is authorized to establish acquisition cost limits in accordance with the requirements detailed in Section 143 of the Internal Revenue Code.

When loan funding sources have no federal regulations requiring acquisition cost limits, UHC may or may not establish acquisition cost limits. UHC's president will establish any acquisition cost limits based on Average Area Purchase Prices as published by the Internal Revenue Service (IRS). The acquisition cost of residential housing is the cost of acquiring a completed residential housing unit and shall include all amounts paid in cash or in kind for all structures, fixtures, improvements, and land. UHC shall post any acquisition cost limits on its website, incorporate the limits as terms of the Program Documents, and shall make information concerning the limits available to all interested persons.

(6) Mortgage Credit Certificates (MCC).

(a) From time to time, UHC may make available amounts to issue mortgage credit certificates to qualified applicants in conjunction with a mortgage loan obtained to purchase residential housing within the state of Utah.

(b) All MCCs issued by UHC shall only be done when an eligible mortgage loan shall be made to finance single-family residential housing in the state which conforms to the requirements of the single-family mortgage program or any other requirements specified in the Program Documents.

(c) UHC may provide priority allocations to make mortgage credit certificates available to persons qualified for any of UHC's single-family loan programs or in targeted, rural, inner city or other areas experiencing difficulty securing mortgage loans to make housing available to persons of low and

moderate income. Furthermore, UHC may provide an allocation of MCCs to a particular development subject to certain conditions.

(d) Each MCC request reserved and issued by UHC shall conform to all requirements of the Program Documents. UHC shall have the right to decline to issue an MCC if, in the reasonable opinion of UHC, the MCC request does not meet all requirements of the Program Documents.

(7) Assumption of single-family mortgage loans.

(a) UHC shall establish and may amend conditions and requirements for the assumption of mortgage loans. The conditions and requirements for the assumption of mortgage loans may vary between the different series of bonds and mortgage insurers or guarantors under which the various mortgage loans have been purchased.

(b) Conditions and requirements for the assumption of mortgage loans may include the following: acquisition cost limits for the residential housing; income limits for the assuming purchaser; the establishment of a limit, expressed as a percentage of the assuming purchaser's income, of the purchaser's monthly housing expenses; a requirement that the purchaser not own any other properties financed under any other UHC program; and any other requirements and qualifications deemed necessary or advisable by UHC. Purchasers, who assume mortgage loans, shall generally be required to satisfy the same requirements that applied to the original borrower.

(c) UHC may impose limits on the maximum amount of assumption fees that may be charged in connection with the assumption of mortgage loans.

(d) UHC may require the continuing liability of the original borrowers in connection with the assumption of mortgage loans.

(e) The required documentation for the assumption of mortgage loans may include documents deemed necessary by UHC, applicable to the particular program.

(8) Limitation of frequency of loan applications.

UHC may establish limitations on the frequency with which a Mortgage Lender, on behalf of a particular mortgage applicant or co-applicant, may request a mortgage purchase agreement or otherwise apply for a reservation of mortgage loan funds if UHC deems a limitation to be necessary to ensure the efficient and equitable allocation of funds.

(9) Definitions.

(a) As used herein, "Mortgage Lender" shall mean a mortgage lender that UHC has determined to be an eligible mortgage lender in accordance with this Rule.

(b) As used herein, "Mortgage Loan" shall mean a loan secured by a deed of trust or mortgage on a single-family residence that UHC has determined to be an eligible mortgage loan in accordance with this Rule.

R460-3-2. Multifamily Mortgage Programs.

(1) No Standard Program.

(a) UHC does not have a standard financing program for bond financed multifamily rental housing. It is the developer's responsibility to engage professionals to assist in obtaining adequate bond credit enhancement and in structuring a sale or placement of the bonds. UHC, as issuer, reserves the right to approve or disapprove the terms of any proposed project or the bond financing enhancement or structure.

(b) The sole source of repayment of the bonds, including all interest and any premiums, for a multifamily rental housing project shall be the revenue sources related to the project financed by the bonds. Neither the bonds nor any interest or premium shall constitute a general indebtedness of UHC.

(c) One or more national rating services must rate publicly offered bonds issued by UHC. A minimum rating as determined by UHC is required, unless specifically waived for good cause. A type of credit enhancement backing the bonds must be in place to increase the probability that the bond holders will be repaid even if the project and its underlying mortgage loan defaults. UHC reserves the right to approve all forms of credit enhancement for the bonds. With certain restrictions, UHC may permit bonds privately placed with institutional investors to be unrated.

(d) Publicly offered bonds issued by UHC shall be sold to underwriter(s) with the financial backing and capability to generate cash at closing equal to the amount of the bonds, regardless of whether the bonds have been resold to investors. UHC may appoint underwriters requested by the developer; however, UHC reserves the right to approve any underwriter, and may appoint co-underwriters, as it deems appropriate.

(2) Legal Opinions.

(a) UHC appoints bond counsel to render any opinion with respect to the tax exemption of the interest on the bonds.

(b) Any other opinions regarding UHC that may be required by other parties to a bond transaction will be rendered by counsel appointed by UHC but paid for by the developer.

(3) Income limits of qualifying tenants.

UHC shall establish and may amend maximum income limits for low and moderate income persons eligible as qualifying tenants of multifamily developments. UHC's president is authorized to establish income limits of UHC's multifamily programs and such limits shall not exceed 140% of area or state median income as determined and published by HUD. UHC shall make information concerning the limits available to interested persons including potential renters and developers and shall incorporate the limits into appropriate documents. Income limits may vary based on, but not limited to, loan program, household size, county, targeted area, source and availability of funds, and risk to UHC.

(4) Eligible developers/owners.

(a) To be eligible to participate in the multifamily financings, the mortgagor/owner may be an individual, a limited liability company, a partnership or a corporation having the legal capacity and authority to borrow money for the purposes of constructing, owning and operating a multifamily development.

(b) UHC may establish criteria relating to the credit worthiness and the financial, construction and operating capacity of the developer/owner as UHC deems necessary to maintain a secure program and to provide decent, safe and sanitary rental housing. Alternatively, in situations where UHC will be issuing bonds the proceeds of which will be loaned to the developer/owner, UHC may rely on the due diligence of the underwriters or purchasers of the bonds and/or the issuer of the credit enhancement for the bonds in making the determination that the developer/owner possesses sufficient creditworthiness and sufficient financial, construction and operating capacity.

(5) Fees and Expenses.

The developer shall be responsible for all fees and expenses incurred in connection with the issuance of any bonds. UHC may charge a developer a fee for issuing the bonds or for performing any services required by UHC.

R460-3-3. Home Improvement Loan Programs (Reserved).

(1) Reserved.

R460-3-4. Low-Income Housing Tax Credit Program.

(1) Application procedures.

(a) UHC shall prepare a low-income housing tax credit allocation plan that provides the administration procedures, allocation procedures, and compliance monitoring procedures that UHC will follow in administering the low income housing tax credit program for the state. The allocation plan may be amended by UHC as is necessary to comply with amendments to section 42 of the code or as deemed necessary by UHC to maintain a sound program. UHC shall prepare an application

form that shall be used to request an allocation of both federal and state low income housing tax credits for a proposed residential housing development. The allocation plan and application form shall be made available electronically via UHC's website or upon request.

(b) UHC may establish and collect fees payable by low income housing tax credit applicants to cover administrative and legal expenses of UHC incurred in processing and reviewing applications, allocating tax credits, monitoring compliance with the provisions of section 42 of the code, and other program requirements.

(2) Reservation of credits.

(a) UHC shall score and rank all applications according to the procedures set forth in the allocation plan. A reservation of low income housing tax credits allocated to an applicant shall be in an amount determined by UHC and shall be based upon the facts, circumstances, and representations made by the applicant in the application.

(b) UHC may condition a reservation of low-income housing tax credits to an applicant upon any restrictions and conditions UHC believes are consistent with the purpose and intent of the program, and those which will ensure the completion of the residential housing development.

(c) No reservation of low-income housing tax credits may be transferred by an applicant unless the specific written approval of UHC is obtained before the proposed transfer. Any transfer shall be made in writing, with copies of all written documents provided to UHC.

(d) Applicants shall provide UHC with any information that may be requested by UHC in performing its duties and responsibilities required under the low-income housing tax credit program and the allocation plan.

(3) Allocation.

(a) UHC shall enter into an agreement for the carry-over allocation of low-income housing tax credits, or make a final allocation of low-income housing tax credits, to applicants who have received a reservation of low-income housing tax credits upon satisfaction to UHC of all of the conditions to the reservation of the low-income housing tax credits and satisfaction of all other requirements under section 42 of the code and the allocation plan.

(b) UHC may disclose the application materials, or any allocating documents, to the Rural Housing Service, Department of Housing and Urban Development or other state or federal agency as is necessary to comply with state or federal law requiring the review of financial subsidies to low-income housing developments.

(c) As a condition to making any allocation of low-income housing tax credits, UHC may require an applicant to make a deposit, or provide other guarantees of performance, in an amount and manner as determined by UHC to ensure the completion of the residential housing development. Circumstances under which deposits or performance guarantees will be returned or forfeited, in whole or in part, shall be made known to applicants in the allocation plan before the collection of the deposit or performance guarantee.

(d) UHC may reserve or allocate low-income housing tax credits in amounts that are less than amounts requested by housing credit applicants. UHC may also forward-reserve credits from the following calendar year to complete the reservation of credits for an applicant that scored well enough to receive a partial reservation of the current year credits.

(4) Compliance monitoring.

(a) UHC shall prepare a compliance monitoring plan which satisfies the requirements of section 42 of the code.

(b) Recipients of low-income housing tax credits shall provide to UHC documentation, certifications and other evidences of compliance with the provisions of section 42 of the code as required in the compliance monitoring plan or other guidance issued by the IRS.

(c) UHC may establish and collect fees payable by recipients of low income housing tax credits to cover administrative and legal expenses of UHC incurred in on-site and/or office-based physical and file compliance reviews, associated documentation review and data input, internal and external reporting of compliance results, maintenance and updating of IT systems which support the program, or other requirements required under section 42 of the code.

(d) If an applicant for low income housing tax credits is considered not in good standing, as detailed in the allocation plan, UHC may disallow any application in which that individual or entity is participating in any way. UHC may bar individuals or entities considered not in good standing from submitting low income housing tax credit applications for a period of time not to exceed five continuous tax-credit cycles which time will be calculated from the date of notification to the affected individuals or entities of the determination of not in good standing status.

R460-3-5. Housing Development Program.

(1) Financial assistance to housing sponsors.

UHC may provide financial assistance to a housing sponsor for the purpose of financing the construction, development, rehabilitation, purchase or operations of residential housing.

(a) UHC shall determine that the project proposed by the housing sponsor increases or maintains the supply of affordable, well-planned, well-designed, permanent, temporary transitional or emergency housing for low and moderate income persons.

(b) The housing sponsor shall agree to provide a specified number of units of residential housing for persons whose income does not exceed the maximum income limits established by UHC. UHC's president is authorized to establish income limits of UHC's housing development programs and such limits shall not exceed 140% of area or state median income as determined and published by HUD.

UHC shall incorporate the income limits in associated program documents and shall make information concerning the limits available to all interested persons. Income limits may vary based on, but not limited to, program, household size, county, targeted area, source and availability of funds, and risk to UHC. UHC may require that the income limits for a project be lower than the maximum income limits.

(c) The amount of the financial assistance shall not exceed the amount required to achieve financial feasibility in providing affordable housing for the intended occupants of the residential housing development.

(d) In determining the amount of financial assistance, UHC shall determine that the costs, including developer fees and reserves, incurred by the housing sponsor with respect to a residential housing development, are not excessively greater than similar housing developments.

(e) The housing sponsor shall agree to the controls and procedures required by UHC to ensure that the financial assistance is used only for the approved purposes.

(f) The housing sponsor shall agree to the continued availability and affordability of the residential housing to low and moderate income persons, pursuant to an enforceable covenant running with the land which is prepared by UHC and recorded with the real estate records of the county in which the residential housing is located.

(g) UHC shall determine that the housing sponsor has the necessary competence, experience and financial capability to complete or operate the residential housing development through an internal review of a sponsor's previous projects and/or through interviews of individuals involved with the sponsor in previous projects.

(h) UHC shall require security for any loan in a form and amount as UHC determines is reasonably necessary to secure

repayment. The security shall include a lien on the project property and may also include an irrevocable letter of credit, personal guarantees, security interests in unrelated real or personal property of the developer, assignments of contract rights and interests related to proposed development of the project, and/or power of attorney to replace manager, general partner or other principals of the developer. The lien on the project property may be subordinate to other financing of the project. Loans to non-profit or governmental entities are not required to be secured by personal guarantees.

(i) In the event that UHC makes a loan that is funded by or subject to any federal or state program, the terms of the loan shall be consistent with the requirements of the applicable program, notwithstanding any inconsistency with this Rule.

(j) As used herein, the "amount of financial assistance" means the principal amount of the loan together with the benefit of loan terms that are not typically available in the market, such as low (or no) interest rate, a long maturity date and/or a deferred (or no) amortization period.

(2) Financial assistance to low and moderate income persons.

UHC may provide financial assistance to low and moderate income persons for the purpose of construction, rehabilitation, purchase, and/or financing of residential housing.

(a) UHC shall determine that, in order to make homeownership feasible for certain low and moderate income persons, financial assistance is necessary to reduce the cost of constructing, rehabilitating, purchasing and/or financing the residential housing.

(b) UHC may establish and amend maximum income limits for low and moderate income persons eligible to receive the financial assistance. The limits shall not exceed 140% of area or state median income as determined and published by HUD. UHC shall incorporate the income limits in associated program documents and shall make information concerning the limits available to all interested persons. Income limits may vary based on, but not limited to, loan program, household size, county, targeted area, source and availability of funds, and risk to UHC. UHC may require that the income limits for a project be lower than the maximum income limits.

(c) The financial assistance will be provided only to assist with the construction, rehabilitation, purchase, and/or financing of residential housing which does not exceed the maximum acquisition cost and appraised value limits established by UHC. The acquisition cost of residential housing is the cost of acquiring a completed residential housing unit and shall include all amounts paid in such or in kind for all structures, fixtures, and land. UHC shall establish and may amend the limits in open public meetings of UHC for which UHC shall have given public notice as required by state law.

(d) UHC may condition the financial assistance provided to the home-buyer upon its repayment, with or without interest, to UHC.

(3) UHC may agree to provide any financial assistance pursuant to such additional conditions, terms and restrictions to ensure that the financial assistance is used as specified by UHC.

(4) UHC may establish application procedures and forms of applications and may collect fees payable by housing sponsors and/or low and moderate income persons to cover administrative and legal expenses of UHC incurred in processing and reviewing applications.

(5) UHC may provide financial assistance only if sufficient funds exist for that purpose and the financial assistance can be provided without jeopardizing the financial self-sufficiency of UHC.

(6) UHC may provide financial assistance to any subsidiary of UHC for any of the purposes set forth in this rule provided the applicable conditions for such financial assistance are satisfied.

(7) For financial assistance provided under a program established by the Trustees of UHC, the general terms of the financial assistance shall be consistent with the requirements of the program and the specific terms shall be determined by the President or another officer designated by the President. For all other financial assistance, the general terms shall be determined by the Trustees and the specific terms shall be determined by the President consistent with the terms determined by the Trustees.

R460-3-6. State Low-Income Housing Tax Credit Program.

(1) Application procedures.

(a) UHC shall incorporate in the low-income housing tax credit allocation plan prepared by UHC pursuant to R460-3-4 criteria and allocation procedures that UHC will follow in administering state low-income housing tax credits.

(b) UHC shall designate the form of application which shall be used to request an allocation of state low-income housing tax credits.

(2) Reservation of credits.

(a) UHC shall evaluate all applications according to the procedures set forth in the allocation plan, however, the applications will not be scored and ranked for purposes of reserving state low-income housing tax credits. A reservation of state low-income housing tax credits allocated to an applicant shall be in an amount determined by UHC and shall be based upon the facts, circumstances, and representations contained in the application. UHC may reserve state low-income housing tax credits to projects either in conjunction with the reservation of federal low-income housing tax credits or at a later date to a project not yet placed-in-service that previously received a reservation of federal low-income housing tax credits.

(b) UHC may condition a reservation of state low-income housing tax credits to an applicant upon any restrictions and conditions UHC believes are consistent with the purpose and intent of the program, and those which will ensure the completion of the residential housing development.

(c) No reservation of state low-income housing tax credits may be transferred by an applicant unless the specific written approval of UHC is obtained before the proposed transfer. Any transfer shall be made in writing, with copies of all written documents provided to UHC.

(d) Applicants shall provide UHC with any information that may be requested by UHC in performing its duties and responsibilities required under the low-income housing tax credit program and the allocation plan.

(3) Allocation.

(a) UHC shall enter into an agreement for the carry-over allocation of state low-income housing tax credits, or make a final allocation of state low-income housing tax credits, to applicants who have received a reservation of state low-income housing tax credits upon satisfaction to UHC of all of the conditions to the reservation of the state and federal low-income housing tax credits.

(b) As a condition to making any allocation of state low-income housing tax credits, UHC may require an applicant to make a deposit, or provide other guarantees of performance, in an amount and manner as determined by UHC to ensure the completion of the residential housing development. Circumstances under which deposits or performance guarantees will be returned or forfeited, in whole or in part, shall be made known to applicants before the collection of the deposit or performance guarantee.

(c) UHC may reserve or allocate state low-income housing tax credits in amounts that are less than amounts requested by applicants.

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R460. Housing Corporation, Administration.
R460-4. Additional Servicing Rules (Reserved).
R460-4-1. Reserved.
Reserved.

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R460. Housing Corporation, Administration.
R460-5. Termination of Eligibility to Participate in Programs.
R460-5-1. Mortgage Lenders.

UHC may terminate the eligibility of a mortgage lender to participate in UHC's programs if UHC finds that a mortgage lender:

(1) has failed to comply with the provisions of the Act or the rules, guidelines, policies or procedures adopted thereunder;

(2) has failed to perform any one or more of its obligations arising under any contractual agreement with UHC;

(3) has commenced a voluntary case under any chapter of the Federal Bankruptcy Code, or has consented to, or has failed to controvert in a timely manner, the commencement of an involuntary case against the mortgage lender under such code, or has initiated or suffered any proceeding of insolvency under any other federal or state receivership law, or made any common law assignment for the benefit of creditors or written admission of its inability to pay debts generally as they become due;

(4) has failed to comply with any state or federal regulatory requirement relating to the mortgage lender's financial condition or operating performance;

(5) has suffered the appointment, by decree or order of a court, agency or supervisory authority having jurisdiction in the premises, of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the mortgage lender or substantially all of its properties, or for the termination or liquidation of its affairs;

(6) has consented to the appointment of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the mortgage lender or substantially all of its properties.

R460-5-2. Servicers (Reserved).

Reserved.

R460-5-3. Other Participants.

(1) UHC may terminate the eligibility of a participant to participate in UHC's programs if UHC finds that a participant:

(a) has made or procured to be made any false statement for the purpose of influencing in any way an action of UHC or any other participant;

(b) has falsely advertised, made misleading or false offers, or otherwise attempted to induce persons to participate in UHC programs when program requirements cannot be met or have not been represented accurately;

(c) has represented, either orally or in writing or advertising, that UHC mortgage loans are available at a specified interest rate when such participant either knew or reasonably should have known that UHC mortgage loans are not available at such rate;

(d) has provided funds, whether by gift or by loan, to unqualified borrowers to enable such borrowers to obtain a mortgage loan or other benefits of a UHC program;

(e) has violated a law, regulation or procedure relating to an application for a mortgage loan or other benefits of a UHC program or relating to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(f) has been debarred or suspended or issued a limited denial of participation from a federal housing program;

(g) has been convicted of or held liable in a civil judgment for any of the following:

(i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(ii) forgery, falsification or destruction of records, making false statements, making false claims, or obstruction of justice;

(iii) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person;

(h) has been determined to be "not in good standing" as detailed in the current-year Qualified Allocation Plan utilized by UHC and its development partners for the housing credit and multifamily bond programs.

(2) For purposes of determining the scope of a participant's ineligibility to participate in UHC programs, conduct may be imputed as follows:

(a) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, employee, partner, joint venturer or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, employee, partner, joint venturer or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) The eligibility of an affiliate or organizational element of a participant may be terminated solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the action. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party, or by an entity that itself is controlled by the primary sanctioned party, is on the affiliate or organizational element.

(4) Ineligibility shall be for a period commensurate with the seriousness of the cause. Ineligibility generally should not exceed three years. Where circumstances warrant, a longer period of ineligibility may be imposed. If a suspension precedes a determination of ineligibility, the length of the suspension period shall be considered in determining the length of the ineligibility period.

(5) The president or other designated officer of UHC may suspend a participant for any of the causes set forth in R460-5-1 or R460-5-3(1) which shall immediately exclude a participant from participating in transactions involving UHC programs for a temporary period not to exceed 12 months.

(a) Suspension is a serious action to be imposed only when there exists adequate evidence of one or more of the causes set out in R460-5-1 or R460-5-3(1) and immediate action is necessary to protect the public interest.

(b) In assessing the adequacy of the evidence, the president of UHC shall consider how much information is available, the credibility of the evidence given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result of all available evidence.

(c) All suspensions shall be for a temporary period pending the completion of an investigation and such legal or ineligibility proceedings as may ensue but in any event shall be for no longer than 12 months.

(d) Suspension shall be made effective by advising the participant, and any specifically named affiliates, electronically via email or facsimile and by certified mail, return receipt requested, of each of the following:

(i) suspension is being imposed;

(ii) the cause relied upon under R460-5-1 or R460-5-3(1) for imposing suspension;

(iii) the suspension is for a temporary period pending the completion of an investigation and such legal or ineligibility proceedings as may ensue; and

(iv) the right to request within 30 days, in writing, a hearing, either oral or on the basis of any written submissions by the respondent.

(e) Within 30 days of receipt of a notice of suspension, a suspended participant, including any affiliate, desiring a hearing shall file a written request for a hearing with UHC. If a hearing is requested, it shall be held in accordance with R460-6-3.3.

(6) UHC shall compile andmaintain a list of all persons or entities whose eligibility to participate in UHC's programs has been terminated or suspended. The list shall include the following items:

(a) the names and addresses of all ineligible and suspended persons or entities;

(b) the type of action;

(c) the cause for the action;

(d) the scope of the action;

(e) any termination date for each listing;

(f) the name and telephone number of UHC point of contact for the action.

(7) Before resorting to adjudicative proceedings under R460-6, UHC may issue a cease and desist order, advising a participant of present actions by the participant that violate this rule, and ordering the participant to cease and desist such actions, subject to further sanctions.

(8) UHC may also refer a case involving a participant to the Utah Department of Commerce, or any other state or federal agency, for further action.

(9) UHC may settle a case at any time.

(10) UHC and a participant may agree to a voluntary exclusion of a participant from a specific program or project.

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R460. Housing Corporation, Administration.
R460-6. Adjudicative Proceedings.
R460-6-1. Nature of Proceeding.

(1) An adjudicative proceeding conducted by UHC, shall generally be conducted as an informal adjudicative proceeding, as provided for in Section 63G-4-203; however at the election of the president of UHC, the proceeding may be conducted as a formal adjudicative proceeding, as provided for in Sections 63G-4-204 through 63G-4-209. The president of UHC will appoint the presiding officer of an adjudicative proceeding who may be the chair, vice chair, acting chair or president of UHC pursuant to Section 63H-8-201 and 63H-8-203.

(2) All requests for formal or informal adjudication proceedings shall be made in writing and signed by the person invoking the jurisdiction of UHC (the "affected party"), or by that person's representative, shall only be addressed to the president, shall be delivered to the offices of UHC, and shall include:

(a) the names and addresses of all persons to whom a copy of the request for UHC action is being sent;

(b) UHC's file number or other reference number, if known;

(c) the date that the request for UHC action was mailed;

(d) a statement of the legal authority and jurisdiction under which UHC action is requested;

(e) a statement of the relief or action sought from UHC; and

(f) a statement of the facts and reasons forming the basis for relief or UHC action.

(3) If the affected party knows of other persons who have a direct interest in the UHC action requested, then the affected party shall mail a copy of his or her request to each such person.

(4) The presiding officer may conduct a single adjudicative proceeding for similar requests for UHC action.

(5) The presiding officer may restrict the submission of additional pleadings and amendment of pleadings after a response has been made by UHC to a request for UHC action.

R460-6-2. Notice of Adjudicative Proceeding.

Whether an adjudicative proceeding is commenced by UHC or requested by an affected party, UHC shall file and serve notice of the adjudicative proceeding upon the affected parties, which notice shall be in writing, shall be mailed postage paid by first-class mail, shall designate the presiding officer, shall be signed by the president of UHC, shall include a statement of whether the adjudicative proceeding is to be conducted informally or formally and otherwise shall be prepared in accordance with the requirements of Section 63G-4-201. For informal adjudication, such notice shall be sent not less than 20 calendar days prior to the proceeding. For formal adjudication, such notice shall be sent not less than 60 calendar days prior to the proceeding (subject to any extensions pursuant to R460-6-4) and shall comply with the requirements set forth in R460-6-4(1) and R460-6-4(2), as applicable.

R460-6-3. Procedures for Informal Adjudicative Proceeding.

(1) No answer or pleading responsive to the notice of adjudicative proceeding need be filed by the affected party.

(2) No hearing shall be held unless the affected party requests a hearing in writing or the presiding officer elects to hold a hearing. The written request for a hearing must be received by UHC no more than 10 calendar days after the service of the notice of adjudicative proceeding.

(3) If a hearing is requested by the affected party, the presiding officer shall elect whether to conduct a hearing given the nature of the dispute. If the presiding officer does elect to conduct a hearing, it will be held no sooner than 10 calendar days after notice of the hearing is mailed to the affected party. The affected party shall be permitted to testify, present evidence, and comment on UHC's proposed action. Prior to the hearing, the affected party may have access to information contained in UHC's files and to materials and information gathered by UHC in its investigation relevant to the adjudicative proceeding, but discovery is prohibited. Access to such information, files and materials is subject to any disclosure exemption afforded under UHC's Governmental Records Access and Management Act (GRAMA) rules. The presiding officer may issue subpoenas or other orders to compel production of necessary evidence.

(4) Intervention is prohibited.

R460-6-4. Procedures for Formal Adjudicative Proceeding.

(1) If UHC denies an affected party's request for a formal adjudicative proceeding, UHC shall send notice to the affected party of the denial stating the proceeding will not be a formal adjudicative proceeding, and stating whether the request for a formal proceeding is denied or whether the proceeding will be held as an informal proceeding, and stating that the affected party may request a hearing before UHC to challenge the denial.

(2) If UHC's proceeding is to be conducted as a formal proceeding, UHC shall send notice to all known interested parties stating that a written response must be filed with UHC by the affected party within 30 calendar days of when the notice was mailed.

(3) The presiding officer may elect to hold a pre-hearing conference with all affected parties or their representatives to review the issues of the dispute and the procedure to be followed.

(4) A hearing shall be held no more than 60 calendar days after the service of the notice of formal adjudicative proceeding. However, in unusual circumstances, the presiding officer may elect to extend the date of the hearing for good cause.

(5) The affected parties shall be permitted to testify, present evidence, and comment on UHC's proposed action. In addition to access to the information available in connection with an informal adjudicative proceeding pursuant to R460-6-3(3), the presiding officer may permit additional discovery as is reasonable given the nature of the dispute. The presiding officer may issue subpoenas or other orders to compel production of necessary evidence.

(6) Intervention determinations will be made by and subject to conditions established by the presiding officer.

(7) UHC shall record the audio of all formal adjudicative proceedings. Any party, at its sole expense, can have such audio recordings transcribed.

R460-6-5. Decision of UHC.

(1) Within 30 calendar days after any hearing requested by an affected party, or after the party's failure to request a hearing within the time prescribed under R460-6-3, UHC shall issue a signed order in writing stating UHC's decision and such other information as is required by Section 63G-4-203. An order of default may be issued by UHC if circumstances described in Section 63G-4-209(1) shall occur.

(2) Requests for reconsideration of determinations made by the presiding officer in an adjudicative proceeding shall be submitted in the same manner as a request for UHC action as specified in R460-6-1(2), and must be submitted within 20 calendar days of UHC's issuance of a determination or signed order.

(3) Requests for reconsiderations of determinations will be evaluated by the presiding officer who may be the chair, vice chair, acting chair or president of UHC pursuant to Section 63H-8-201 and 63H-8-203. The presiding officer will issue an order granting or denying such request within 20 calendar days of its receipt by the presiding officer. If the presiding officer does not issue an order within such 20 calendar day period, the request shall be considered to be denied.

(4) No separate hearings will be conducted, and no oral

arguments will be heard in connection with a request for reconsideration, unless requested by the presiding officer.

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R460. Housing Corporation, Administration.
R460-7. Public Petitions For Declaratory Orders.
R460-7-1. Purpose.

(1) As required by Section 63G-4-503, this rule provides the procedures for submission, form, content, filing, review, and disposition of petitions for agency declaratory orders regarding the applicability of statutes, rules, and orders governing or issued by UHC.

(2) The procedures governing agency declaratory orders shall be applied in the following order:

(a) the applicable procedures of Section 63G-4-503;

(b) the procedures specified in this R460-7;

(c) the Utah Rules of Civil Procedure;

(d) the applicable procedures of other governing state and federal law.

R460-7-2. Definitions.

Terms used in this rule are defined in Section 63G-4-103, and in addition:

(1) "Applicability" means a determination if a statute, rule or order should be applied, and if so, how the law stated should be applied to the facts.

(2) "Declaratory order" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule or order.

(3) "Order" is defined in Section 63G-3-102.

R460-7-3. Petition Form Content and Filing.

(1) The petition shall be addressed and delivered to the president of UHC, who shall mark the petition with the date of receipt.

(2) The petition shall:

(a) be clearly designated as a request for a UHC declaratory order;

(b) identify the specific statute, rule or order which is in question or to be reviewed;

(c) describe the reason or need for the applicability review, addressing, in particular, why the review should not be considered frivolous;

(d) include an address and telephone number where the petitioner can be contacted during regular work days;

(e) declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months;

(f) be signed by the petitioner.

(3) Any letter that expressly states the intent to request an agency declaratory ruling and substantially complies with the information required in this subsection shall be treated as fulfilling the requirements of this subsection even though a technical deficiency may exist in the letter.

R460-7-4. Reviewability.

(1) UHC shall review and consider the petition and may issue a declaratory order.

(2) UHC shall not review a petition for declaratory order that is:

(a) not within the jurisdiction of UHC;

(b) irrelevant or immaterial;

(c) subject to the restrictions of Section 63G-4-503.

R460-7-5. Petition Review and Disposition.

(1) In promptly reviewing and considering the petition UHC may:

(a) meet with the petitioner;

(b) consult with counsel;

(c) take any action consistent with law that UHC deems necessary to provide the petition adequate review and due consideration.

(2) After consideration of a petition for a declaratory order, UHC may issue a written order:

(a) declaring the applicability of the statute, rule or order in question to the specified circumstances;

(b) which declines to issue a declaratory order and stating the reasons for its action;

(c) agreeing to issue a declaratory order within a specified time.

(3) A declaratory order shall contain:

(a) the names of all parties to the proceeding on which it is based;

(b) the particular facts on which it is based;

(c) the reasons for its conclusion.

(4) A copy of all orders issued in response to a request for a declaratory order shall be mailed promptly to the petitioner and any other parties.

(5) If UHC sets the matter for an adjudicative proceeding under Section 63G-4-503(6)(a)(ii), the proceeding shall be designated as informal, pursuant to R460-6, and shall follow the appropriate procedures of Section 63G-4.

R460-7-6. Administrative Review.

A petitioner may seek review or reconsideration of a declaratory order by petitioning UHC under the procedures of Sections 63G-4-301 and 302 or as otherwise provided by law.

R460-7-7. Extension of Time.

Unless the petitioner and UHC agree in writing to an extension, if UHC has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

KEY: housing finance
1990 63G-4-503
Notice of Continuation September 15, 2017

R460. Housing Corporation, Administration.
R460-8. Americans with Disabilities Act (ADA) Complaint Procedures.
R460-8-1. Authority and Purpose.

(1) UHC, pursuant to 28 CFR 35.107 adopts and publishes within this rule, complaint procedures providing for prompt and equitable resolution of complaints filed according to Title II of the Americans With Disabilities Act, as amended.

(2) The provision of 28 CFR 35 implements the provisions of Title II of the Americans With Disabilities Act, as amended, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

R460-8-2. Filing of Complaints.

(1) Any qualified individual (defined as an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by UHC; also, an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires) may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) The complaint shall be filed timely to assure prompt, effective assessment and consideration of the facts, but no later than 90 days from the date of the alleged act of discrimination.

(3) The complaint shall be filed with the president of UHC or the president's appointed ADA coordinator in writing or in another accessible format suitable to the complainant.

(4) Each complaint shall include the following:

(a) the complainant's name and mailing address;

(b) the nature and extent of the complainant's disability;

(c) a description of UHC's alleged discriminatory action in sufficient detail to inform UHC of the nature and date of the alleged violation;

(d) a description of the action and accommodation desired; and

(e) a signature of the complainant or by his or her legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R460-8-3. Investigation of Complaint.

(1) The ADA coordinator shall investigate each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in R460-8-2(4) if it is not made available by the complainant.

(2) When conducting the investigation, the ADA coordinator may seek assistance from UHC's legal counsel and human resource staff in determining what action, if any, shall be taken on the complaint. The coordinator will consult with the president before making any decision that would involve any of the following:

(a) an expenditure of funds;

(b) facility modifications; or

(c) modification of an employment classification.

R460-8-4. Issuance of Decision.

(1) Within 30 days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another suitable format stating what action, if any, shall be taken on the complaint.

(2) If the ADA coordinator is unable to reach a decision within the 30 day period, he shall notify the complainant in writing or by another suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R460-8-5. Appeals.

(1) The complainant may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(2) The appeal shall be filed in writing with the president or a designee other than the ADA coordinator.

(3) The filing of an appeal shall be considered as authorization by the complainant to allow review of all information, including information classified as private or controlled, by the president or designee.

(4) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(5) The president or designee shall review the factual findings of the investigation and the complainant's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. The president may consult with legal counsel and/or the human resource department before making any decision that would involve any of the following:

(a) an expenditure of funds;

(b) facility modifications; or

(c) modification of an employment classification.

(6) The decision shall be issued within 45 days after receiving the appeal and shall be in writing or in another suitable format to the individual.

(7) If the president or his designee is unable to reach a decision within the 30 day period, he shall notify the complainant in writing or by another suitable format why the decision is being delayed and the additional time needed to reach a decision.

R460-8-6. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator, president or their designees issue the decision at which time any portions of the record that may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302 or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, president or their designees shall be classified as public information.

R460-8-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the Utah Antidiscrimination Act (see Utah Code 34A-5); the Federal ADA Complaint Procedures (28 CFR 35 Subpart F); or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: housing finance
November 27, 2012 63H-8-301
Notice of Continuation September 15, 2017

R527. Human Services, Recovery Services.
R527-36. Collection of Child Support After a Termination of Parental Rights or Adoption.
R527-36-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to specify how the Office of Recovery Services/Child Support Services (ORS/CSS) will handle support obligations when there is a termination of parental rights or an adoption order which does not specifically preserve arrears.

R527-36-2. ORS/CSS Collection of Child Support after Termination of Parental Rights Orders or Adoption Orders.

Pursuant to Section 78A-6-513 and Section 78B-6-138, a parent is released from any legal obligation to pay child support or provide medical support when there is a termination of parental rights order or an adoption order.

If the parental rights of either the parent paying support or the parent receiving support have been terminated, or if the child has been legally adopted, ORS/CSS will not continue collection efforts toward any accrued child support arrears from or for a parent whose rights have been terminated if the parental termination of rights or adoption order does not specifically preserve the arrears balance to be collected.

An exception exists pursuant to Department of Human Services' Rule 495-882 when the child is placed in the care or custody of the state or with an individual other than the parent for at least 30 days.

KEY: parental rights, adoption, child support
September 26, 2017

62A-1-111
62A-11-107
78A-6-513
78B-6-138

R547. Human Services, Juvenile Justice Services.
R547-13. Guidelines for Admission to Secure Youth Detention Facilities.
R547-13-1. Authority.

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-13-2. Purpose and Scope.

(1) This rule establishes guidelines for admission to secure detention to meet the requirements of Section 62A-7-202.

(2) This rule shall be applied to youth candidates for placement in all secure detention facilities operated by the Division of Juvenile Justice Services.

R547-13-3. Definitions.

(1) Terms used in this rule are defined in Sections 62A-7-101 and 78A-6-105.

(2) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(3) "Youth" means a person age 10 or over and under the age of 21.

R547-13-4. General Rules.

(1) A youth age 10 or 11 may be detained in a secure detention facility if arrested for any felony violation of Section 76-3-203.5(c), violent felony

(2) A youth age 12 or over may be detained in a secure detention facility if:

(a) A youth is arrested for any of the following state or federal equivalent criminal offenses:

(i) Any offense which would be a felony if committed by an adult;

(ii) Any attempt, conspiracy, or solicitation to commit a felony offense;

(iii) Any class A misdemeanor violation of 76-5 Part 1, offense against the person; assault and related offenses;

(iv) Any class A or B misdemeanor violation of 76-10 Part 5, offenses against public health, safety, welfare, and morals; weapon offenses;

(v) A class A misdemeanor violation of Section 76-5-206, negligent homicide;

(vi) A class A misdemeanor violation of Section 58-37-8(1)(b)(iii), a controlled substance violation;

(vii) Any criminal offense defined as domestic violence (cohabitant) by 77-36-1(4), and 78B-7-102(2) and (3);

(viii) A class A or B misdemeanor violation of Section 76-6-104(1)(a) or (b), reckless burning which endangers human life;

(ix) A class A misdemeanor violation of Section 76-6-105, causing a catastrophe;

(x) A class A misdemeanor violation of Section 76-6-106(2)(b)(i)(a), criminal mischief involving tampering with property that endangers human life;

(xi) A class A misdemeanor violation of Section 76-6-406, theft by extortion;

(xii) A class A misdemeanor violation of Section 76-9-702.1, sexual battery;

(xiii) A class A misdemeanor violation of Section 76-5-401.3(2)(c) or (d), unlawful adolescent sexual activity;

(xiv) A class A misdemeanor violation of Section 76-9-702.5, lewdness involving a child;

(xv) A class A misdemeanor violation of Section 76-9-702.7(1), voyeurism with recording device;

(xvi) A class A misdemeanor violation of Section 41-6A-401.3(2), leaving the scene of an accident involving injury; and

(xvii) A class A misdemeanor violation of Section 41-6A-503(1)(b)(i) or (ii), driving under the influence involving injury; driving under the influence with a passenger under 16 years of age.

(b) The youth is an escapee or absconder from a Juvenile Justice Services secure facility or community placement.

(c) The youth has been verified as a fugitive (absconder from probation or parole) or a runaway from another state and a formal request has been received (such as a TWX/National Crime Information Center (NCIC) or a telephone call/FAX/email from a law enforcement officer or a verified call/FAX/email from the institution) to hold, pending return to the other jurisdiction, whether or not an offense is currently charged.

(3) A youth not otherwise qualified for admission to a secure detention facility shall not be detained for any of the following:

(a) ungovernable or runaway behavior;

(b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason;

(c) status offenses such as curfew, possession/consumption of alcohol, tobacco, minor-in-a-tavern, truancy; or

(d) attempted suicide.

(4) No youth under the age of ten years may be detained in a secure detention facility.

R547-13-5. Juvenile Court Warrants for Custody or Pickup Orders.

A youth shall be admitted to a secure detention facility when a juvenile court judge or commissioner has issued a warrant for custody.

R547-13-6. Juvenile Justice Services' Cases.

A youth who is on parole or involved in a trial placement from a secure facility, and who is detained solely on a warrant from the Division of Juvenile Justice Services may be held in a secure detention facility up to 48 hours excluding weekends and legal holidays.

R547-13-7. DCFS Cases.

A youth in the custody or under the supervision of the Division of Child and Family Services (DCFS) cannot be held in a secure detention facility unless the youth qualifies for detention under some section of this rule.

R547-13-8. Traffic Cases.

A youth brought to detention for traffic violation(s) cannot be held in a secure detention facility unless the youth qualifies for detention under some section of this rule.

R547-13-9. Interstate Cases.

(1) Out-of-state youth who are escapees, absconders, and runaways shall be detained in accordance with the provisions of Subsection R547-13-4(2)(c).

(2) Youth who are out-of-state runaways who commit any non-status criminal offense(s) may be admitted to a secure detention facility.

(3) Out-of-state, non-runaway youth, when brought to a secure detention facility with an alleged criminal offense, may be detained or released based on the same criteria which applies to resident youth.

R547-13-10. Immigration Cases.

A youth may be detained at a secure detention facility when a lawful detainer or order is presented by United States Immigration and Customs Enforcement (ICE).

R547-13-11. AWOL Military Personnel.

Absent without leave (AWOL) military personnel who are minors shall be admitted to a secure detention facility.

R547-13-12. Home Detention Cases.

(1) If a home detention violation is alleged, the home

detention counselor may cause the alleged violator to be brought to a secure detention facility. If the case involves a violator who is a runaway where a pickup order (Warrant for Custody) has not yet been issued, a law enforcement officer may bring the violator to a secure detention facility. The home detention counselor may then transfer the minor back to the status of home detention, if appropriate, or may authorize the youth to be held in secure detention for a re-hearing.

(2) A youth placed on home detention who is arrested by a law enforcement officer for an alleged non-status criminal offense(s) shall be admitted to a secure detention facility.

R547-13-13. Probation Violation - Contempt of Court - Stayed Order for Detention.

A youth may be admitted to a secure detention facility for conditions such as: an alleged probation violation, contempt of court, or a stayed order for detention when it has been ordered by a judge. When it is not possible to get a written order, verbal authorization from a judge to detention is sufficient to hold a youth in a secure detention facility.

R547-13-14. Other Court Orders for Detention.

A youth brought to a secure detention facility pursuant to either federal or out-of-state court orders shall be admitted unless otherwise directed by a juvenile court judge.

KEY: juvenile corrections, juvenile detention, admission guidelines, juvenile justice services

September 26, 2017 **62A-7-202**
Notice of Continuation March 27, 2017 **78A-6-112**
78A-6-113

R590. Insurance, Administration.
R590-131. Accident and Health Coordination of Benefits Rule.
R590-131-1. Authority.

This rule is adopted and promulgated pursuant to Subsection 31A-2-201(3)(a) and Section 31A-22-619.

R590-131-2. Purpose and Applicability.

A. The purpose of this rule is to:

1. establish a uniform order of benefit determination under which plans pay coordination of benefit claims;

2. reduce duplication of benefits by permitting a reduction of the benefits paid by a plan when the plan, pursuant to this rule, does not have to pay its benefits first; and

3. provide greater efficiency in the processing of claims when a person is covered under more than one plan.

B. This rule applies to all accident and health insurance plans issued on or after the effective date of this rule.

R590-131-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions in Sections 31A-1-301 and 31A-30-103, and the following:

A. "Allowable Expense" means any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.

1. If an insurer is advised by a covered person that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established in accordance with Section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in Section 223(c)(2)(C) of the Internal Revenue Code of 1986.

2. An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.

3. Any expense that a provider, by law or in accordance with a contractual agreement, is prohibited from charging a covered person is not an allowable expense.

4. The following are examples of expenses that are not allowable expenses:

a. If a person is confined in a private hospital room, the difference between the cost of a semi-private room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.

b. If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology, any amount charged by the provider in excess of the highest reimbursement amount for a specified benefit is not an allowable expense.

c. If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

d. If a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees, relative value schedule reimbursement, or other similar reimbursement methodology and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangement shall be the allowable expense for all plans. However, if the provider has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan's payment arrangement and if the provider's contract permits, that negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits.

e. The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drug, or hearing aids.

i. A plan that limits the application of COB to certain coverages or benefits may limit the definition of allowable expense in its contract to expenses that are similar to the expenses that it provides.

ii. When COB is restricted to specific coverages or benefits in a contract, the definition of allowable expense shall include similar expenses to which COB applies.

f. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid.

g. The amount of the reduction may be excluded from allowable expense when a covered person's benefits are reduced under a primary plan because the covered person does not comply with the plan provisions concerning second surgical opinions or pre-certification of admissions or services.

B. "Birthday" refers only to month and day in a calendar year and does not include the year in which the person was born.

C. "Child" means a:

1. child as defined in Section 78B-12-102; or

2. dependent child that is provided coverage pursuant to Sections 31A-22-610, 610.5 and 611.

D. "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

1. services (including supplies);

2. payment for all or a portion of the expenses incurred;

3. a combination of (1) and (2) above; or

4. an indemnification.

E. "Closed Panel Plan" means a plan that provides health benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by a plan, and that excludes benefits for services provided by other providers, except in the cases of emergency or referral by a panel member.

F. "Conforming Plan" means a plan that is subject to this rule.

G. "Continuation Coverage" means coverage provided under right of continuation pursuant to the federal (COBRA) law, Utah mini-COBRA, or a state extension law. For the purposes of this rule, a person's eligibility status will maintain the same classification under continuation coverage.

H. "Coordination of Benefits" or "COB" means a provision establishing an order in which plans pay their coordination of benefit claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

I. "Custodial Parent" means:

1. the legal custodial parent or physical custodial parent as awarded by a court decree; or

2. in the absence of a court decree, the parent with whom the child resides more than one half of the calendar year without regard to any temporary visitation.

J.1. "Group-type contract" means a contract that is not available to the general public and is obtained and maintained only because of membership in or a connection with a particular organization or group, including blanket coverage.

2. Group-type contract does not include an individually underwritten and issued guaranteed renewable policy even if the policy is purchased through payroll deduction at a premium savings to the insured since the insured would have the right to maintain or renew the policy independently of continued employment with the employer.

K. "High-deductible Health Plan" has the meaning given the term under Section 223 of the Internal Revenue Code of

1986, as amended by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

L. "Hospital Indemnity Benefits" means benefits not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

M. "Non-conforming Plan" means a plan that is not subject to this rule.

N. "Plan" means a form of coverage with which coordination is allowed.

1. Separate parts of a plan that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan.

2. If a plan coordinates benefits, its contract shall state the types of coverage that will be considered in applying the COB provision of that contract.

3. Whether a plan's contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than the definition of "plan."

4. Plan shall include:

a. individual and group accident and health insurance contracts and subscriber contracts except as provided by R590-131-3.N.5;

b. uninsured arrangements of group or group-type coverage;

c. coverage through closed panel plans;

d. group-type contracts;

e. medical care components of long-term care contracts, such as skilled nursing care; and

f. Medicare or other governmental benefits, as permitted by law.

5. Plan shall not include:

a. hospital indemnity coverage benefits or other fixed indemnity coverage;

b. accident only coverage;

c. specified disease or specified accident coverage;

d. limited benefit health coverage, as defined in Rule R590-126;

e. school accident-type coverages that cover students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis;

f. benefits provided in long-term care insurance policies for non-medical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

g. Medicare supplement policies;

h. a state plan under Medicaid; or

i. a governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other non-governmental plan.

O. "Policyholder" means the primary insured named in a non-group insurance policy.

P. "Primary Plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if:

1. the plan has no order of benefit determination;

2. its rules differ from those permitted by this rule; or

3. all plans which cover the person use the order of benefit determination provisions of this rule and under those requirements the plan determines its benefits first.

Q. "Retiree employee benefit plan" means an employee benefit plan as defined in 29 U.S.C. 1002(3).

R. "Secondary Plan" means any plan, which is not a primary plan.

S. "Separated" means married persons who are legally separated.

R590-131-4. COB Contract Provisions.

A. A COB provision may not be used that permits a plan to reduce its benefits on the basis that:

1. another plan exists and the covered person did not enroll in that plan;

2. a person is or could have been covered under another plan, except with respect to a retiree employee benefit plan; or

3. a person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.

B. Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel provider for either plan.

1. In most instances, COB does not occur if a covered person is enrolled in two or more closed panel plans and obtains services from a provider in one of the closed panel plans. The closed panel plan whose providers were not used, has no liability.

2. COB may occur during the plan year when the covered person receives services from a provider who is on each closed panel, or emergency services that would have been covered by both plans. The secondary plan shall use the provisions of R590-131-7 to determine the amount it should pay for the benefit.

C. No plan may use a COB provision, or any other provision that allows it to reduce its benefits with respect to any other coverage its insured may have that does not meet the definition of a plan under R590-131-3.

R590-131-5. Rules for Coordination of Benefits.

When a person is covered by two or more plans, the rules for determining the order of benefit payments are as follows:

A. The primary plan shall pay or provide its benefits as if the secondary plans or plan did not exist.

B. If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan shall pay or provide benefits as if it were the primary plan when a covered person uses a non-panel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan.

C. When multiple contracts providing coordinated coverage are treated as a single plan under this rule, this section applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one insurer pays or provides benefits under the plan, the insurer designated as primary within the plan shall be responsible for the plan's compliance with this rule.

D. If a person is covered by more than one secondary plan, benefits are determined using the rules in R590-131-6. Each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the rules of this rule, has its benefits determined before those of the secondary plan.

E.1. Except as provided in R590-131-5.E.2., a plan that does not contain order of benefit determination provisions that are consistent with this regulation is always the primary plan unless the provisions of both plans, regardless of the provisions of this subsection, state that the complying plan is primary.

2. Coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance type coverages that are written in connection with a closed panel plan to provide out-of-

network benefits.

F. A plan may take into consideration the benefits paid or provided by another plan only when, under the rules of this regulation, it is secondary to that other plan.

R590-131-6. Determining Order of Benefits.

Each plan determines its order of benefits using the first of the following rules that apply:

A. Non-dependent or Dependent.

The plan that covers the person other than as a dependent, such as an employee, member, policyholder retiree or subscriber, is the primary plan and the plan that covers the person as a dependent is the secondary plan.

B. Child Covered Under More Than One Plan.

Unless there is a court decree stating otherwise, plans covering a child shall determine the order of benefits as follows:

1. For a child whose parents are married or living together if they have never been married:

a. The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

b. If both parents have the same birthday, the plan that has covered the parent longest is the primary plan.

2. For a child whose parents are divorced or separated or are not living together if they have never been married:

a.i. If a court decree states that one of the parents is responsible for the child's health care expenses or health care coverage, the responsible parent's plan is primary.

ii. If the parent with responsibility has no health care coverage for the child's health care expenses, but the spouse of the responsible parent does have health care coverage for the child's health care expenses, the responsible parent's spouse's plan is the primary plan.

b. If a court decree states that both parents are responsible for the child's health care expenses or health care coverage, the provisions of R590-131-6.B.1. shall determine the order of benefits.

c. If a court decree states that the parents have joint custody without stating that one parent has responsibility for the health care expenses or health care coverage of the child the provisions of R590-131-6.B.1. shall determine the order of benefits, or

d. If there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child are as follows:

i. the plan covering the custodial parent;

ii. the plan covering the custodial parent's spouse;

iii. the plan covering the non-custodial parent; and then

iv. the plan covering the non-custodial parent's spouse.

e. For a child covered under more than one plan, and one or more of the plans provides coverage for individuals who are not the parents of the child, such as a guardian, the order of benefits shall be determined under R590-131-6.B.1. or 2. as if those individuals were parents of the child.

C. Active, Retired, or Laid-Off Employee.

1. The plan that covers a person as an active employee who is neither laid off, nor retired, nor a dependent of an active employee, is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

2. If the other plan does not have this rule, and the plans do not agree on the order of benefits, this rule is ignored.

3. This Subsection does not apply if the rule in Subsection 6.A. can determine the order of benefits.

D. COBRA or State Continuation Coverage.

1. If a person whose coverage is provided pursuant to COBRA or under a right of continuation pursuant to state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the primary plan and the plan covering that same person pursuant to COBRA or under a right of continuation pursuant to state or other federal law is the secondary plan.

2. If the other plan does not have this rule, and the plans do not agree on the order of benefits, this rule is ignored.

3. This rule does not apply if the rule in R590-131-6.A. can determine the order of benefits.

E. Longer or Shorter Length of Coverage.

1. If the preceding rules do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan.

2.a. To determine the length of time a person has been covered under a plan, two successive plans shall be treated as one if the claimant was eligible under the second within 24 hours after coverage under the first plan ended.

b. The start of a new plan does not include:

i. a change in the amount or scope of a plan's benefits;

ii. a change in the entity that pays, provides or administers the plan's benefits; or

iii. a change from one type of plan to another, such as, from a single employer plan to a multiple employer plan.

c. The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available, the date the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.

F. If none of the above rules determine the primary plan, the allowable expenses shall be shared equally between the plans.

G. If the plans cannot agree on the order of benefits within 30 calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have paid had it been the primary plan.

R590-131-7. Procedure to be Followed by Secondary Plan to Calculate Benefits and Pay a Claim.

A. In determining the amount to be paid by the secondary plan on a claim, the secondary plan shall calculate the benefits, should the secondary plan wish to coordinate benefits, it would have paid on the claim in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan.

B. The secondary plan may reduce its payment amount so that when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim do not exceed 100% of the total allowable expense for that claim.

C. The secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

R590-131-8. Miscellaneous Provisions.

A. Reasonable Cash Value of Services.

1. A secondary plan which provides benefits in the form of services may recover the reasonable cash value of providing the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan.

2. Nothing in this provision may be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan, which provides benefits in the form of services.

B. Excess and Other Provisions.

1. No policy or plan subject to this rule may contain a

provision that its benefits are "excess" or "always secondary" to any other plan or policy.

2. A plan with COB rules which comply with these rules, which is called a conforming plan, may coordinate benefits with a plan which is "excess" or "always secondary" or which uses COB rules inconsistent with this rule, which is called a non-conforming plan, on the following basis:

a. if the conforming plan is the primary plan, it shall pay or provide its benefits on a primary basis;

b. if the conforming plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the conforming plan were the secondary plan. In such a situation, the payment shall be the limit of the conforming plan's liability; and

c. if the non-conforming plan does not provide the information needed by the conforming plan to determine its benefits within a reasonable time after it is requested to do so, the conforming plan shall assume that the benefits of the non-conforming plan are identical to its own and shall pay its benefits accordingly. If within three years of payment, the conforming plan receives information as to the actual benefits of the non-conforming plan, it shall adjust any payments accordingly.

d.i. If the non-conforming plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the conforming plan paid or provided its benefits as the secondary plan, and the non-conforming plan paid or provided its benefits as the primary plan, then the conforming plan shall advance to the covered person, or on behalf of the covered person, an amount equal to such difference.

ii. In no event shall the conforming plan advance more than the conforming plan would have paid had it been the primary plan, less any amount it had previously paid.

iii. In consideration of such advance, the conforming plan shall be subrogated to all rights of the covered person against the non-conforming plan in the absence of subrogation.

C. If the plans cannot agree on the order of benefits within thirty calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have paid had it been the primary plans.

D. Subrogation.

COB clearly differs from subrogation. Provisions for one may be included in health care benefit contracts without compelling the inclusion or exclusion of the other.

E. Right To Receive and Release Needed Information. Certain facts are needed to apply these COB rules. An insurer has the right to decide which facts it needs. It may obtain needed facts from or give them to any other organization or person. An insurer need not tell or obtain consent from any person to do this. To facilitate cooperation with insurers; guidelines for medical privacy issues are provided under U.A.R R590-206, and Title V of Gramm-Leach-Bliley Act of 1999. Each person claiming benefits under a plan shall give the insurer any facts it needs to pay the claim.

F. Right of Recovery.

1. If the amount of the payments made by an insurer is more than it should have paid under the provisions of this rule, subject to 31A-26-301.6, it may recover the excess paid from one or more of the following, if they were paid by the insurer:

a. an insured;

b. a non-contracted provider;

c. a contracted provider;

d. other insurance companies; or

e. other organizations.

2. Reversals of payments made due to issues related to this rule are limited to the time period stated in Section 31A-26-301.6, except as provided in Section 31A-21-313.

3. It is the insurer's responsibility to see that the proper adjustments between insurers and providers are made.

G. Notice to Covered Persons. A plan shall, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one health benefit plan, you should file all your claims with each plan."

H. If otherwise covered benefits are due to a loss subject to Section 31A-22-306, then an accident and health insurer may exclude benefits covered by personal injury protection described in Subsection 31A-22-307(1)(a), up to the:

1. personal injury protection benefit provided by motor vehicle insurance; or

2. minimum amount required by Section 31A-22-307, if motor vehicle insurance is not in effect.

I. Facility of Payment. A payment made under another plan may include an amount, which should have been paid under the plan. If it does, the insurer may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under the plan. The insurer will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

R590-131-9. COB Scenarios.

The following scenarios are provided to assist in demonstrating the use of the COB rule:

A. Parents Not Married, Living Together, No Court Decree. The order of benefits pursuant to R590-131-6.B.1. shall be:

1. the parent whose birthday falls earlier in the calendar year; then

2. the parent whose birthday falls later in the calendar year; or

3. if the parents have the same birthday, the plan that has covered the parent longest; then

4. the plan that has covered the parent the shortest.

B. Parents Divorced, Separated, Or Not Living Together.

1. The court decree gives joint custody with the father responsible for the child's health care expenses or health care coverage, and the father has health care coverage. The order of benefits pursuant to R590-131-6.B.2.a. shall be the:

a. natural father;

b. step-mother;

c. natural mother; then

d. step-father.

2. The court decree gives joint custody with father responsible for the child's health care expenses or health care coverage, the father does not have health care coverage, but his wife does. The order of benefits pursuant to R590-131-6.B.2.a. shall be the:

a. step-mother;

b. natural mother; then

c. step-father.

3. The court decree gives custody to the father and requires both parents to be responsible for health care expenses or coverage. The father's date of birth (DOB) 12/01, the step-mother's DOB 02/17, the mother's DOB 08/23, and the step-father's DOB 01/10. The order of benefits pursuant to R590-131-6.B.2.b. shall be the:

a. step-father;

b. step-mother;

c. natural mother; then

d. natural father.

4. A court decree awards joint custody and the father physical custody. The court decree does not address health care

expenses or coverage. The father's DOB is 12/01, the step-mother's DOB is 02/17, the mother's DOB is 08/23, and the step-father's DOB is 01/10. The order of benefits pursuant to R590-131-6.B.2.c. shall be the:

a. step-father;
b. step-mother;
c. natural mother; then
d. natural-father.

5. A court decree awards joint custody and requires both parents to be responsible for health care expenses or coverage. The child lives with the mother 51% of the year. The father's DOB is 12/01, the step-mother's DOB is 02/17, the mother's DOB is 08/23, and the step-father's DOB is 01/10. The order of benefits pursuant to R590-131-6.B.2.b. shall be the:

a. step-father;
b. step-mother;
c. natural mother; then
d. natural father.

C. Parents Never Married.

1. The parents are not living together and no court decree exists. The order of benefits pursuant to R590-131-6.B.2.d shall be the;

a. custodial parent;
b. custodial parent's spouse;
c. non-custodial parent; and then
d. non-custodial parent's spouse.

2. The parents are not living together and the court decree awards custody to mother, but the decree does not address health care expenses or coverage. The order of benefits pursuant to R590-131-6.B.2.d. shall be the:

a. natural mother;
b. step-father;
c. natural father; then
d. step-mother.

D. Children No Longer Minors. A court decree orders that the natural father is to provide insurance for the minor children and custody is awarded to the natural mother. The dependents are age 18 and older. The order of benefits pursuant to R590-131-6.B.2.d shall be the:

1. natural mother;
2. step-father;
3. natural father; then
4. step-mother.

R590-131-10. Effective Date for Existing Contracts.

A. A contract that provides health care benefits issued before the effective date of this rule shall be brought into compliance with this rule no later than January 1, 2009.

R590-131-11. Penalties.

Any insurer that fails to comply with the provisions of this rule, shall be subject to the forfeiture and penalty provisions of Section 31A-2-308.

R590-131-12. Separability.

If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances shall not be affected.

R590-131-13. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule January 1, 2009.

KEY: insurance law
October 2, 2008 31A-2-201
Notice of Continuation September 29, 2017 31A-21-307

R592. Insurance, Title and Escrow Commission.
R592-5. Title Insurance Product or Service Approval for a Dual Licensed Title Licensee.
R592-5-1. Authority.

This rule is promulgated pursuant to Sections 31A-2-404 and 31A-2-405, which direct the Title and Escrow Commission to make rules to administer the provisions related to title insurance.

R592-5-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the requirements for a dual licensed title licensee to obtain:

(a) approval from the insurance commissioner pursuant to Subsection 31A-2-405(2); and

(b) expedited approval from the Title and Escrow Commission pursuant to Subsection 31A-2-405(3).

(2) This rule applies to all title licensees and applicants for a title insurance license or renewal of a title insurance license.

R592-5-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions in Sections 31A-1-301, 31A-2-402, and the following:

(1)(a) "Dual licensed title licensee" has the same meaning as set forth in 31A-2-402.

(b) "Dual licensed title licensee" does not mean:

(i) a title licensee who holds an inactive license under 31A-2-402(3)(b)(i), (ii) and (iii); or

(ii) a title licensee who holds an education provider certificate.

(2) "Need for expedited approval" means a significant hardship to the buyer or seller in the transaction.

(3) "Principal" means a person from whom a dual licensee has received compensation for submitting a transaction under one or more of his or her dual licenses. Examples include, but are not limited to, a mortgage company, a real estate broker, an agency title insurance producer, a builder, or a developer.

(4) "Title insurance product" means the insuring, guaranteeing, or indemnifying of owners of real or personal property or the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

(5) "Title insurance service" has the same meaning as the definition of "escrow" found in Subsection 31A-1-301(56).

R592-5-4. Filing Requirements, Processes and Procedures.

(1) Only a dual licensed title licensee can file a request for approval for the provision of a title insurance product or service.

(2) A complete filing consists of:

(a) a filing fee pursuant to Section 31A-3-103; and either

(b) a "Dual Licensee Request For Approval for the Provision of a Title Insurance Product or Service" form; or

(c) a "Dual Licensee Request For Expedited Approval for the Provision of a Title Insurance Product or Service" form.

(3) A filing to request approval of a "Dual Licensee Request for Approval for the Provision of a Title Insurance Product or Service" form must:

(a) be sent electronically to the commissioner via email to pcforms.uid@utah.gov; and

(b) include credit card information in the payment section of the form.

(4) An expedited filing to request approval of a "Dual Licensee Request for Expedited Approval for the Provision of a Title Insurance Product or Service" form must:

(a) include a completed Section 6, Reason for Requesting Expedited Approval, on the "Dual Licensee Request for Expedited Approval for the Provision of a Title Insurance Product or Service" form;

(b) be sent electronically to the Chair of the Title and Escrow Commission via email to pcforms.uid@utah.gov; and

(c) include credit card information in the payment section of the form.

(5) Approval or disapproval will be sent to the filer via return email.

R592-5-5. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.

R592-5-6. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Sections 31A-2-308 and 31A-2-405.

R592-5-7. Enforcement Date.

The commissioner will begin enforcing this rule 15 days after the rule's effective date.

KEY: title dual licensees
October 26, 2007 **31A-2-404**
Notice of Continuation September 13, 2017

R616. Labor Commission, Boiler, Elevator and Coal Mine Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-1. Authority.

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler, Elevator and Coal Mine Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code -- 2015.

1. Section I Rules for Construction of Power Boilers.

2. Section IV Rules for Construction of Heating Boilers.

3. Section VIII Rules for Construction of Pressure Vessels.

B. Power Piping ASME B31.1 -- 2014.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-2015. Except:

1. Part CG-130(c).

D. National Board Inspection Code ANSI/NB-23 - 2017 Part 3.

E. NFPA 85 Boiler and Combustion Systems Hazard Code 2015.

F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 Tenth Edition, 2014. Except:

1. Section-8, and

2. Appendix-A.

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a new installation.

R616-2-6. Variances to Code Requirements.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code compliance manual for organizations and personnel involved in the design, installation, operation and maintenance of boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-

2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. For boilers or pressure vessels inspected by an inspector employed by the Division, the owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. For boilers or pressure vessels inspected by a deputy inspector employed by an insurance company, the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located is subject to the agreement between the insurance company and the owner or operator of the boiler or pressure vessel. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the boiler inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-2-13, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(2)(a) and 63G-4-201(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 shall be informal and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Section 63G-4-202(3).

R616-2-15. Deputy Boiler/Pressure Vessel Inspectors.

A. Purpose -- Section 34A-7-10 of the Safety Act ("the Act"; Title 34A, Chapter 7, Part One, Utah Code Annotated) permits the Division of Boiler, Elevator and Coal Mine Safety ("the Division") to authorize qualified individuals to inspect boilers and pressure vessels as "deputy inspectors." This rule sets forth the Division's procedures and standards for authorizing deputy inspectors, monitoring their performance, and suspending or revoking such authority when appropriate.

B. Initial appointment of deputy inspectors.

1. An applicant for initial Division authorization to inspect boilers and pressure vessels as a deputy inspector must satisfy the following requirements in the order listed below:

a. A company insuring boilers and pressure vessels in Utah ("sponsoring employer" hereafter) must submit a letter to the Division certifying that:

i. the applicant is employed by the sponsoring employer; and

ii. the sponsoring employer requests the Division authorize the applicant to inspect boilers and pressure vessels insured by that employer;

b. The applicant or sponsoring employer must submit to the Division a current, valid certification from the National Board of Boiler and Pressure Vessel Certification ("National Board") that the applicant is qualified to inspect boilers and pressure vessels;

c. The applicant or sponsoring employer must submit an application fee of $25 to the Division;

d. The applicant must complete training for deputy inspectors provided by the Division;

e. The applicant must pass an oral examination administered by the Division pertaining to boiler and pressure vessel inspection standards and processes; and

f. The applicant must pass a written, closed-book examination administered by the Division on the Division's boiler/Pressure Vessel Compliance Manual, Rules, and codes adopted;

2. Upon successful completion of the foregoing requirements, the Division will appoint the applicant as a deputy inspector and will issue credentials to that effect. The Division will also notify the sponsoring employer of the appointment.

3. Initial appointment as a deputy inspector terminates at the end of the calendar year in which such appointment is made unless a deputy inspector qualifies for reappointment under paragraph C of this rule.

C. Annual reappointment of deputy inspectors.

1. Effective January 1 of each year, the Division will renew the appointment of each deputy inspector for an additional year if the inspector satisfies the following requirements:

a. The individual was authorized to serve as a deputy inspector as of December 31 of the previous year;

b. A sponsoring employer has submitted a letter to the Division certifying that:

i. the individual is employed by the sponsoring employer; and

ii. The sponsoring employer requests the Division to reappoint that individual as a deputy inspector to inspect boilers and pressure vessels for that employer;

c. The individual or sponsoring employer has submitted to the Division a current, valid certification from the National Board establishing that the individual is qualified as a boiler and pressure vessel inspector;

d. The individual or sponsoring employer has submitted to the Division the required renewal fee of $20;

e. The individual has completed the Division's required training for deputy inspectors.

2. An individual who does not meet each of the foregoing requirements is not eligible for reappointment as a deputy inspector and must instead meet each of the requirements for initial appointment under paragraph B of this rule.

D. Lapse, change of employment and loss of National Board certification.

1. Lapse. An individual's appointment as a deputy inspector will lapse if the individual:

a. Does not renew the appointment by satisfying the requirements of paragraph C of this rule;

b. Does not perform and submit to the Division at least one boiler or pressure vessel inspection during the previous calendar year; or

c. Fails to inform the Division of any change in status of employment with his or her sponsoring employer as required in the following paragraph D.2. of this rule.

2. Change in employment.

a. A deputy inspector must immediately notify the Division in writing of any change in the status of the inspector's employment with his or her sponsoring employer.

b. If the Division determines that an individual previously appointed as a deputy inspector is no longer employed by a company authorized to insure boilers and pressure vessels in Utah, the Division will immediately revoke that individual's appointment.

c. If the Division determines that a deputy inspector has changed employment to another company that insures boilers and pressure vessels in Utah, the Division will require the new employer or deputy inspector to submit the following:

i. A letter from the new employer:

AA. certifying that the individual is employed by that sponsoring employer; and

BB. requesting that the individual's appointment as a deputy inspector be continued;

ii. A current, valid certification as a boiler/pressure vessel inspector from the National Board; and

iii. Payment to the Division of the required fee of $20.

3. National Board Certification.

a. Every deputy inspector shall at all times hold a current valid certification as a boiler/pressure vessel inspector from the National Board.

b. Each deputy inspector shall immediately notify the Division if his or her National Board certification has been revoked or suspended.

c. If the Division has reason to believe that a deputy inspector's National Board certification has been revoked or suspended, the Division will obtain written verification from the National Board. IF the National Board has in fact revoked or suspended the deputy inspector's certification, the Division will revoke the inspector's appointment as a deputy inspector.

E. Scope of authority. Appointment as a deputy inspector has the limited effect of authorizing the deputy inspector to inspect boilers and pressure vessels insured by his or her sponsoring employer for compliance with engineering codes and other standards adopted by the Division in Utah Administrative Code Rule R616-2. The Division expressly does not confer any other authority to deputy inspectors. Deputy inspectors remain employees of their respective sponsoring employers and are not employees of the Division or agents of the Division for any other purpose. A deputy inspector's right to inspect any particular boiler or pressure vessel, including the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located, is subject to the agreement between the sponsoring employers and the owner or operator of the boiler or pressure vessel. Appointment as a deputy inspector by the Division does not confer any right of entry independent from the terms of such agreement.

F. Inspection Standards

1. In inspecting any boiler or pressure vessel, a deputy inspector shall apply the standards and engineering codes adopted in Utah Administrative Code R616-2 - Boiler and Pressure Vessel Rules.

2. Each deputy inspector must use the Division's web-based applications to accurately record and submit all information regarding boilers and pressure vessels, including;

a. inspection reports;

b. scrapped and inactive items;

c. information changes other than those requiring submission of a Change of Insurance Status Form (NB4); and

d. a Web Issue Form (Form WIF-01) to identify any error or other issue resulting from the deputy inspector's use of the Division's web-based applications.

G. Quality Control. The Division will evaluate the performance of each deputy inspector to assure compliance with the Division's standards for boiler and pressure vessel inspections.

1. The Division's Business Analyst will review each inspection report submitted by a deputy inspector and will report any serious errors to the Chief Boiler and Pressure Vessel Inspector ("Chief Inspector") for appropriate action.

2. Each year, the Chief Inspector will evaluate a sample of each deputy inspector's inspections performed during that year for compliance with Division standards.

3. In addition to the reviews undertaken pursuant to paragraph G.2. of this rule, the Chief Inspector will also investigate any observation or report of an inspection deficiency to determine whether the deputy inspector complied with Division standards and rules in performing and reporting the inspection.

H. Corrective Action, Revocation and Right to Hearing.

1. If the Chief Inspector concludes that a deputy inspector does not satisfy requirements of this rule for continued appointment as a deputy inspector or has performed an inspection in a manner that is inconsistent with Division

standards, the Chief Inspector will submit a written report and may recommend corrective action to the Division Director.

2. Depending on the circumstances and the seriousness of the situation, corrective action may include;

a. warning letter;

b. requirements for additional training;

c. requirements for retesting;

d. request review by the National Board;

e. additional supervision; and

f. revocation of appointment as a deputy inspector.

3. The Division Director shall forward a copy of the Chief Inspector's written report and any recommendation for corrective action to the deputy inspector and the sponsoring employer. If the deputy inspector or sponsoring employer dispute the report or recommended corrective action, the Division Director shall schedule time and place to conduct a hearing on the matter, such hearing to be conducted as an informal adjudicative proceeding under the Utah Administrative Procedures Act. After conducting such hearing, the Division Director will issue a written decision setting forth the material facts and ordering appropriate corrective action, if any. The Division Director shall forward a copy of the decision to the deputy inspector, sponsoring employer, and the National Board.

4. If the deputy inspector or sponsoring employer is dissatisfied with the Division Director's decision, the inspector or sponsoring employer may seek judicial review as provided by the Utah Administrative Procedures Act.

KEY: boilers, certification, safety
September 21, 2017 34A-7-101 et seq.
Notice of Continuation August 23, 2016

R616. Labor Commission, Boiler, Elevator and Coal Mine Safety.
R616-3. Elevator Rules.
R616-3-1. Authority.

This rule is established pursuant to Section 34A-7-201 for the purpose of the Labor Commission ascertaining, fixing, and enforcing reasonable standards regarding elevators for the protection of life, health, and safety of the general public and employees.

R616-3-2. Definitions.

A. "ANSI" means the American National Standards Institute, Inc.

B. "ASME" means the American Society of Mechanical Engineers.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler, Elevator and Coal Mine Safety of the Labor Commission.

E. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform and that moves in guides in a substantially vertical direction.

F. "Escalator" means a stairway, moving walkway, or runway that is power driven, continuous and used to transport one or more individuals.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1-2013/CSA B44-10, Safety Code for Elevators and Escalators, and amended as follows:

1. Delete 2.2.2.5;

2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every two years. New issues become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2015 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Boiler, Elevator and Coal Mine Safety.

C. ASME A90.1-2015, Safety Standard for Belt Manlifts.

D. ANSI A10.4-2016, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. ICC/ANSI A117.1 (2009) Accessible and Usable Buildings and Facilities, sections 407 and 408, and 410 approved October 20, 2010.

F. ASME A18.1-2014 Safety Standard For Platform Lifts And Stairway Chairlifts.

G. ASME A17.6-2010 Standard for Elevator Suspension, Compensation, and Governor Systems.

R616-3-4. Inspector Qualification.

A. Any person who performs elevator safety inspections must have a current certification as a Qualified Elevator Inspector from a nationally accredited organization.

R616-3-5. Modifications and Variances to Codes.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner/user, the Division may allow the owner/user a variance. Variances must be in writing to be effective and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their elevator installation provides safety equivalent to the applicable safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

D. The Commission may, by rule, add or delete from the applicable safety codes for any good and sufficient safety reason.

E. In the event that adopted safety codes are in conflict with one another, the ASME A17.1, Safety Code for Elevators and Escalators will take precedence. The exception to this is for compliance with the accessibility guidelines of Pub. L. No. 101-336 "The Americans with Disability Act of 1990". In this instance, the International Building Code standards adopted in R616-3-3 for accessibility as applied to elevators take precedence over ASME A17.1.

R616-3-6. Exemptions.

A. These rules apply to all elevators in Utah with the following exemptions:

1. Private residence elevators installed inside a single family dwelling. Common elevators which serve multiple private residences are not exempt from these rules.

2. Elevators in buildings owned by the Federal government.

B. Owners of elevators exempted in R616-3-6.A. may request a safety inspection by Division of Boiler, Elevator and Coal Mine Safety inspectors. Code non-compliance items will be treated as recommendations by the inspector with the owner having the option as to which, if any, are corrected. Owners requesting these inspections will be invoiced at the special inspection rate. If the owner requests a State of Utah Certificate to Operate for the elevator, all of the recommendations must be completed to the satisfaction of the inspector and the owner will be invoiced the appropriate certificate fee.

R616-3-7. Inspection of Elevators, Permit to Operate, Unlawful Operations.

A. It shall be the responsibility of the Division to make inspections of all elevators when deemed necessary or appropriate.

B. Elevator inspectors shall examine conditions in regards to the safety of the employees, public, machinery, drainage, methods of lighting, and into all other matters connected with the safety of persons using or in close proximity to each elevator, and when necessary give directions providing for the better health and safety of persons in or about the same. The owner/user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary.

C. If the Division finds that an elevator complies with the applicable safety codes and rules, the owner/user shall be issued a Certificate of Inspection and Permit to Operate.

1. The Certificate of Inspection and Permit to Operate is valid for 24 months.

2. The Certificate of Inspection and Permit to Operate shall be displayed in a conspicuous location for the entire validation period. If the certificate is displayed where accessible to the general public, as opposed to being in the elevator machine room, it must be protected under a transparent cover.

D. If the Division finds an elevator is not being operated in accordance with the safety codes and rules, the owner/user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the elevator into compliance.

E. Pursuant to Section 34A-7-204, if the improvements or changes are not made within a reasonable time, by agreement of the division and the owner, the elevator is being operated

unlawfully.

F. If the owner/user refuses to allow an inspection to be made, the elevator is being operated unlawfully.

G. If the owner/user refuses to pay the required fee, the elevator is being operated unlawfully.

H. If the owner/user operates an elevator unlawfully, the Commission may order the elevator operation to cease pursuant to Section 34A-1-104.

I. If, in the judgment of an elevator inspector, the lives or safety of employees or public are, or may be, endangered should they remain in the danger area, the elevator inspector shall direct that they be immediately withdrawn from the danger area, and the elevator removed from service until repairs have been made and the elevator has been brought into compliance.

R616-3-8. Inclined Wheelchair Lift Headroom Clearance.

A. Headroom clearance for inclined wheelchair lifts throughout the range of travel shall be not less than 80 inches (2032 mm) as measured vertically from the leading edge of the platform floor.

B. For existing facilities only, in the event that it is not technically or economically feasible to provide other means of access for disabled persons, inclined wheelchair lifts may be installed if all of the following conditions are met:

1. The appropriate building inspection jurisdiction approves the use of an inclined wheelchair lift for the specific application.

2. Headroom clearance throughout the range of travel shall be not less than 60 inches as measured vertically from the leading edge of the platform floor.

3. The passenger restriction sign as required by ASME A18.1 3.1.2.3 shall be amended as follows: "PHYSICALLY DISABLED PERSONS ONLY. NO FREIGHT. HEADROOM CLEARANCE IS LIMITED. USE ONLY IN THE SITTING POSITION".

R616-3-9. Valves in Hydraulic Elevator Operating Fluid Systems.

A. Due to the potential loss of pressure retaining capability when over torqued, bronze-bodied valves shall not be installed in the hydraulic systems of a hydraulic elevator.

B. This requirement is in effect for all new installations and remodel installations involving the hydraulic system.

C. If a bronze-bodied valve installed on an existing elevator begins to leak, that valve shall be replaced by a steel-bodied valve.

R616-3-10. Hydraulic Elevator Piping.

A. This rule establishes minimum standards for hydraulic fluid piping in hydraulic elevators. The piping specifications referred to in this rule are governed by ASME or ASTM piping specifications (e.g. ASME Specification SA-53 Table X2.4).

B. Hydraulic elevators not incorporating a safety valve may use schedule 40 piping.

C. For newly installed hydraulic elevators that do incorporate a safety valve:

1. Where piping is protected by the safety valve, schedule 40 piping may be used;

2. Where grooved or threaded connections are used in piping that is unprotected by the safety valve, i.e. between the safety valve and the hydraulic jack(s), nominal pipe size (NPS)3 or schedule 80 piping may be used;

3. Where piping is unprotected by the safety valve, but welded or bolted flange connections are used, schedule 40 piping may be used.

R616-3-11. Shunt Trips in Elevator Systems.

A. The means (shunt trip) to automatically disconnect the main line power supply to the elevator discussed in 2.8.2.3.2 of A17.1 is not required for hydraulic elevators with a rise of 50 feet or less.

R616-3-12. Hoistway Vents.

Hoistway ventilation as outlined in the International Building Code is under the jurisdiction of the local building official.

R616-3-13. Hand Line Control Elevators.

A. Operation of a hand line control elevator is not permitted.

B. Owners of hand line control elevators are required to render the elevator electrically and mechanically incapable of operation.

R616-3-14. Remodeled Elevators.

A. When an elevator is classified as a remodeled (modernized) elevator by the Division, the components of the elevator involved in the modernization must comply with the standards of the latest version of ASME A17.1 and ASME A17.3 in effect at the time the remodeling of the elevator commences.

R616-3-15. Fees.

A. Fees to be charged as provided by Section 34A-1-106 and 63J-1-303 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

B. The fee for the initial certification permit shall be invoiced to and paid by the company or firm installing the elevator.

C. The renewal certification permit shall be invoiced to and paid by the owner/user.

D. Any request for a special inspection shall be invoiced to and paid by the person/company requesting the inspection, at the hourly rate plus mileage and expenses.

R616-3-16. Notification of Installation, Revision or Remodeling.

A. Before any elevator covered by this rule is installed or a major revision or remodeling begins on the elevator, the Division must be advised at least one week in advance of such installation, revision, or remodeling unless emergency dictates otherwise.

R616-3-17. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the elevator inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-3-18. Presiding Officer.

The elevator inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-3-18, the Commission shall appoint the presiding officer for that hearing.

R616-3-19. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(3)(a) and 63G-4-201(3)(b).

R616-3-20. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-3-18 shall be informal and pursuant to the procedural requirements of Section 63G-4-

203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Subsection 63G-4-202(3).

KEY: elevators, certification, safety
September 21, 2017 34A-1-101 et seq.
Notice of Continuation August 23, 2016

R628. Money Management Council, Administration.
R628-2. Investment of Funds of Public Education Foundations Established Under Section 53A-4-205 or Funds Acquired by Gift, Devise, or Bequest.
R628-2-1. Authority.

This rule is issued pursuant to Section 51-7-18(2)(b).

R628-2-2. Scope of Rule.

This rule relates to all funds of public education foundations established under Section 53A-4-205 and any funds held by a public treasurer which were acquired by gift, devise, or bequest and which are permitted by statute to be invested according to rules adopted by the Money Management Council.

R628-2-3. Investment Directions Contained in Gift or Grant.

If any gift, devise, or bequest, whether outright or in trust, is made by a written instrument which contains lawful directions as to investment thereof, the funds embodied within the gift, devise or bequest shall be invested and held in accordance with those directions. Common stock received by donation which is registered stock, or which is otherwise restricted from sale because it is not registered with the Securities and Exchange Commission, may be retained until the restrictions lapse, expire, or are revoked and shall be considered to be invested according to the terms of the donation. A gift, devise or bequest of closely held non-marketable securities, shall be purchased by the closely held entity within twenty four months of the gift, devise or bequest. Evidence of such put shall be furnished at the time of the gift, devise or bequest.

R628-2-4. Investment of Funds.

A. Funds within the scope of this rule, except funds described in Section R628-2-3, may be invested in any of the following:

1. in any deposit or investment authorized by Section 51-7-11 or 51-7-5;

2. in professionally managed pooled or commingled investment funds registered with the Securities and Exchange Commission with a Morningstar rating of "3" or higher.

3. in equity securities, including common and convertible preferred stock and convertible bonds, issued by corporations listed on a major securities exchange or in the NASDAQ, in accordance with the following criteria applied, on a total market basis, at the time of investment:

a) no more than 20% of all funds may be invested in securities listed in the NASDAQ;

b) no more than 5% of all funds may be invested in the securities of any one corporate issuer;

c) no more than 25% of all funds may be invested in a particular industry;

d) no more than 5% of all funds may be invested in securities of corporations that have been in continuous operation for less than three years;

e) no more than 5% of the outstanding voting securities of any one corporation may be held; and

f) at least 50% of the corporations in which equity investments are made under R628-2-4.(A)(3) must appear on the Standard and Poor's 500 Composite Stock Price Index and the Wilshire 5000;

4. in fixed-income securities, including bonds, notes, mortgage securities and zero coupon securities, issued by corporations rated "investment grade" or higher by Moody's Investors Service, Inc. or by Standard and Poor's Corporation in accordance with the following criteria applied, on a total market basis, at the time of investment:

a) no more than 5% of all funds may be invested in the securities of any one corporate issuer;

b) no more than 25% of all funds may be invested in a particular industry;

c) the dollar-weighted average maturity of fixed-income securities acquired under R628-2-4(A)(4) may not exceed ten years; and

5. in fixed-income securities issued by agencies of the United States and United States government-sponsored organizations, including mortgage-backed pass-through certificates, mortgage-backed bonds and collateralized mortgage obligations (CMO's).

B. Investments made under this rule shall observe the following investment percentages on a total market basis as of the most recent quarterly review, for specified subsections;

1. no more than 75% of all funds may be invested in equity securities (Subsection R628-2-4(A)(3) investments).

2. no more than 5% of all funds may be invested in collateralized mortgage obligations (CMO's) (Subsection R628-2-4(A)(5) investments).

C. The selection criteria established in Section 51-7-14 shall apply to investments permitted by this rule.

D. Certified investment advisers may be employed to assist in the investment of funds under this rule. Compensation to certified investment advisers may be provided from earnings generated by the funds' investments.

R628-2-5. Disposition of Nonqualifying Investments.

A. If at any time securities do not qualify for investment in accordance with this rule, investments shall be disposed of within a reasonable time. In determining what constitutes reasonable time for the disposition of assets, the following factors, among others, shall be given consideration:

1. the legality of sale under the rules and regulations of the Securities and Exchange Commission and the Utah State Securities Commission;

2. the size of the investment held in relation to the normal trading volume therein, and the effect upon the market price of the sale of the investment; and

3. the wishes of the donor respecting the sale of the investment.

B. If, in the opinion of the custodian or investment manager of the funds, an orderly liquidation of a nonqualifying investment cannot be accomplished within a period of two years, a request may be made to the Council for approval of a specific plan of disposition of nonqualifying investments. Nothing contained in this paragraph shall make an investment nonqualifying, if the retention of the investment is specifically authorized or directed under terms of the gift, devise, or bequest, or if the security is restricted from sale as provided in this rule.

R628-2-6. Nonqualifying Investments Held on Effective Date.

Any nonqualifying investments held on November 1, 2005 shall be treated as having been received on the effective date and shall be disposed of as provided in Subsection R628-2-5.

R628-2-7. Multiple Funds.

If a public treasurer or a public education foundation has more than one fund or investment pool in which funds covered by this rule are managed, the following rules apply in determining investment percentages:

A. If the investment of any funds is covered by a direction in the instrument creating a gift, devise, or bequest, or if the donation consists of securities restricted from sale, the funds shall be excluded from any computation of permitted investments.

B. All other funds within the scope of this rule shall be consolidated for determining the propriety of investments. Any restrictions as to investment percentages shall be determined as provided for in Subsection R628-2-4(B).

R628-2-8. Investment Policy Approval.

Each public education foundation or public treasurer having funds acquired by gift, devise, or bequest shall have their investment policies approved by their respective board of trustees or governing body.

R628-2-9. Reporting by Public Education Foundations and Public Treasurers.

Each public education foundation and public treasurer, having funds acquired by gift, devise, or bequest and funds functioning as endowments shall file a written report with the Council on or before July 31 and January 31 of each year containing the following information for investments held on June 30 and December 31 respectively:

A. total market value of funds held under gifts, devise or bequest and funds functioning as endowments;

B. amount invested under this rule;

C. amounts invested under this rule indicating the carrying value and market value of each category of investment; and

D. a list of all nonqualifying assets held under this rule containing the date acquired, the carrying value and market value of each asset.

E. The board of trustees or governing body shall review the portfolio at least quarterly, and shall receive the certification from the public treasurer that the portfolio complies with the Money Management Act, Rules of the Money Management Council and the prudent person rule in section 51-7-14 of the Act.

KEY: public investments, higher education, public education

September 7, 2017 **51-7-11(4)**
51-7-13
51-7-18(2)

R634. Natural Resources, Administration.
R634-1. Americans With Disabilities Complaint Procedure.
R634-1-1. Authority and Purpose.

(1) This rule is promulgated pursuant to Section 63G-3-201(2) of the state Administrative Rulemaking Act. The department, pursuant to 28 CFR 35.107, 2002 ed., adopts, defines and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.

(2) The provision of 28 CFR 35, 2002 ed., implements the provisions of Title II of the Americans With Disabilities Act, 42 USC 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by this or any such entity.

R634-1-2. Definitions.

(1) "Department" means the state Department of Natural Resources.

(2) "The ADA Coordinator" means the Department of Natural Resources' Coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(3) "The Department of Natural Resources ADA Coordinating Committee" means that committee composed of:

(a) the two assistant directors;

(b) the Human Resource director; and

(c) the administrative assistant to the executive director.

(4) "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(a) Office of Planning and Budget;

(b) Department of Human Resource Management;

(c) Division of Risk Management;

(d) Division of Facilities Construction and Management; and

(e) Office of the Attorney General.

(5) "Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(7) "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his or her major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the department, or who would otherwise be an eligible applicant for vacant department positions, as well as those who are employees of the department.

R634-1-3. Filing of Complaints.

(1) A complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination.

(2) The complaint shall be filed with the department's ADA Coordinator, preferably in writing or in another suitable format.

(3) Each complaint should:

(a) include the individual's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the individual or by his or her legal representative.

(4) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R634-1-4. Investigation of Complaint.

(1) The ADA Coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section R634-1-3(c) if it is not made available by the individual.

(2) When conducting the investigation, the ADA Coordinator will consult with the Department of Natural Resources' ADA Coordinating Committee. The ADA Coordinator may also seek assistance from the department's legal staff and the director of the division against which the complaint was filed, in determining what action, if any, shall be taken on the complaint. The ADA Coordinator shall consult with the ADA State Coordinating Committee before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the department's budget and would require appropriation authority;

(b) facility modifications which are not absorbable within the department's budget and would require appropriation authority; or

(c) a situation which would involve an individual's employment status.

R634-1-5. Issuance of Decision.

A written determination, or in another suitable format, as to the validity of a complaint, along with a description of the resolution, if any, will be issued by the ADA Coordinator, and a copy shall be forwarded to the complainant no later than 10 working days after the complaint has been filed. If more time is needed in the investigation, the ADA Coordinator shall communicate the reason and time frames to the complainant.

R634-1-6. Appeals.

(1) The individual may appeal the decision of the ADA Coordinator by filing an appeal within 10 working days from the receipt of the decision.

(2) The appeal shall be filed, preferably in writing or in another suitable format, with the department's executive director or designee.

(3) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the department's executive director or designee.

(4) The appeal shall describe in sufficient detail why the ADA Coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(5) The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding the ADA Coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. The executive director or designee shall also consult with the ADA State Coordinating Committee before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the department's budget and would require appropriation

authority;

(b) facility modifications which are not absorbable within the department's budget and would require appropriation authority; or

(c) a situation that would involve an individual's employment status.

(6) A written determination, or in another suitable format, as to the validity of a complaint, along with a description of the resolution, if any, will be issued by the executive director or designee, and a copy shall be forwarded to the complainant no later than 10 working days after the appeal has been filed. If more time is needed in the investigation, the executive director or designee shall communicate the reason and time frames to the complainant.

R634-1-7. Classification of Records.

(1) The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63-2-304 until the ADA Coordinator, executive director, or their designees issue the decision at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302 or controlled as defined in Section 63-2-303.

(2)(a) All other information gathered as part of the complaint record shall be classified as private information.

(b) Only the written decision of the ADA Coordinator, executive director or designees shall be classified as public information.

R634-1-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR Subpart F, beginning with Part 35.170, 2002 ed.; or

(c) any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: civil rights, liberties
March 4, 2003 63G-3-201(2)
Notice of Continuation September 14, 2017

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-2. General Rules.
R649-2-1. Scope of Rules.

1. The following general rules adopted by the board pursuant to Chapter 6 of Title 40 shall apply to all lands in the state in order to conserve the natural resources of oil and gas in the state, to protect human health and the environment, to prevent waste, to protect the correlative rights of all owners and to realize the greatest ultimate recovery of oil and gas.

2. Special rules and orders have been and will be issued by the board when required and shall prevail as against the general rules and orders of the board if in conflict therewith.

3. Exceptions to the general rules may also be granted by the director or authorized agent for good cause shown and shall prevail as against the general rules.

4. No exceptions granted by the board, director, or authorized agent to the rules applicable to the Underground Injection Control Program will be effective without the consent of the federal Environmental Protection Agency.

R649-2-2. Application of Rules to Lands Owned or Controlled By the United States.

These general rules shall apply to all lands in the state including lands of the United States and lands subject to the jurisdiction of the United States to the extent lawfully subject to the state's power.

R649-2-3. Application of Rules to Unit Agreements.

1. The board may suspend the application of the general rules or orders or any part thereof, with regard to any unit agreement approved by a duly authorized officer of the appropriate federal agency, so long as the conservation of oil or gas and the prevention of waste is accomplished thereby.

2. Such suspension shall not relieve any operator from making such reports as are otherwise required by the general rules or orders, or as may reasonably be requested by the board or the division in order to keep the board and the division fully informed as to operations under such unit agreements.

R649-2-4. Designation of Agent or Operator.

1. A designation of agent or operator shall be submitted to the division prior to the commencement of operations.

2. A designation of agent or operator will, for purposes of the general rules and orders, be accepted as evidence of authority of agent to fulfill the obligations of the owner, to sign any required documents or reports on behalf of the owner, and to receive all authorized orders or notices given by the board or the division.

3. All changes of address and any termination of the designated agent's or operator's authority shall be promptly reported in writing to the division, and in the latter case a designation of a new agent or operator shall be promptly made.

R649-2-5. Right to Inspect.

1. The director or authorized agent shall have the right at all reasonable times to go upon and inspect any oil or gas properties and wells for the purpose of making any investigations or tests reasonably necessary to ensure compliance with the provisions of the statutes, the general rules and orders of the board or any special field rules and orders. The director or authorized agent shall report any observed violation to the board.

2. The documentation of off lease transportation of crude oil required by R649-2-6, Access to Records, shall be carried in the motor vehicle during transportation and shall be available for examination and inspection by the director or an authorized agent upon request.

R649-2-6. Access to Records.

1. Any person who produces, operates, sells, purchases, acquires, stores, transports, refines, or processes oil or gas or who injects fluids for cycling, pressure maintenance, secondary or enhanced recovery, or disposal of salt water or oil field waste within the state, shall make and keep appropriate books and records covering his operations in the state from which he shall be able to make and substantiate all reports required by the board or the division.

1.1. Such books and records, together with copies of all reports and notices submitted to the board or the division shall be kept on file and available for inspection by the director or an authorized agent at all reasonable times for a period of at least six years.

1.2. The director or the authorized agent shall also have access to all pertinent well records wherever located.

2. Each owner or operator shall permit the director or authorized agent at his sole risk and expense, in the absence of negligence on the part of the owner or operator, to come upon any lease, property or well operated or controlled by him; to inspect the records pertaining to and the manner of operation of such property or well; and to have access at all reasonable times to any and all records pertaining to such well. All information so obtained by the director or authorized agent shall be kept confidential and shall be reported only to the division or its authorized agent, unless the owner or operator gives written permission to the director to release such information.

3. All off lease transportation of oil by motor vehicle shall be accompanied by a run ticket or equivalent document. The documentation shall identify the name and address of the transporter, the name of the operator, the lease or facility from which the oil was taken, the date of removal, the API gravity of the oil, the calculated percentage of BS and W, the volume of oil or the opening and closing tank gauges or meter readings, and the destination of the oil.

R649-2-7. Naming of Oil and Gas Fields or Pools.

1. The division shall name oil and gas fields or pools within the state in cooperation with a Fields Names Advisory Committee and with due regard and consideration for any recommendation from the owners or operators of such fields or pools. The Field Names Advisory Committee shall be composed of a representative of the United States Bureau of Land Management and representatives of appropriate state agencies and the oil and gas industry.

R649-2-8. Measurement of Production.

1. The volume of oil production shall be computed in barrels of clean oil, on the basis of acceptable meter measurements, tank measurements, or with such greater accuracy as may be required by the division. Computations of the volume of oil production shall be subject to the following corrections:

1.1. The gross volume of oil shall be corrected to exclude the entire volume of impurities not constituting a natural component part of the oil.

1.2. The observed volume of oil after correction for impurities shall be further corrected to the standard volume at 60 degrees Fahrenheit, in accordance with Table 6A of the API/ASTM D-1250, Chapter 11.1, Manual of Petroleum Measurement (1980), or any revisions or supplements, or any alternative publication or tables approved by the division.

1.3. The observed gravity of oil shall be corrected to the standard API gravity at 60 degrees Fahrenheit in accordance with Table 5A of API/ASTM, D-1250, Chapter 11.1, Manual of Petroleum Measurement (1980), or any revisions or supplements, or any alternative publication or tables approved by the division.

2. All gas shall be measured by an orifice type meter

unless otherwise authorized by the division.

2.1. In computing the volumes of all gas produced, sold, or injected, the standard pressure base shall be 14.73 pounds per square inch absolute (psia), and the standard temperature base shall be 60 degrees Fahrenheit.

2.2. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized by the division.

R649-2-9. Refusal to Agree.

1. An owner shall be deemed to have refused to agree to bear his proportionate share of the costs of the drilling and operation of a well under Section 40-6-6.5 if:

1.1. The operator of the proposed well has, in good faith, attempted to reach agreement with such owner for the leasing of the owner's mineral interest or for that owner's voluntary participation in the drilling of the well.

1.2. The owner and the operator have been unable to agree upon terms for the leasing of the owner's interest or for the owner's participation in the drilling of the well. For purposes of Utah Code Sections 40-6-2(4) and -2(11), the consent and agreement required of an owner shall be manifested by the owner agreeing in writing, within thirty (30) days from the date the notice required by Utah Code Section 40-6-2(11) is received, to bear that owner's proportionate share of the costs of drilling, testing, completion, equipping and operation of the well.

2. If the operator of the proposed well shall fail to attempt, in good faith, to reach agreement with the owner for the leasing of that owner's mineral interest or for voluntary participation by that owner in the well prior to the filing of a Request for Agency Action for involuntary pooling of interests in the drilling unit under Section 40-6-6.5 then, upon written request and after notice and hearing, the hearing on the Request for Agency Action for involuntary pooling may, at the discretion of the board or its designated hearing examiner, be delayed for a period not to exceed 30 days, to allow for negotiations between the operator and the owner.

R649-2-10. Notification of Lease Sale or Transfer.

The owner of a lease shall provide notification to any person with an interest in such lease, when all or part of that interest in the lease is sold or transferred.

R649-2-11. Confidentiality of Well Log Information.

1. Well logs marked confidential shall be kept confidential for one year after the date on which the log is required to be filed with the division, unless the operator gives written permission to release the log at an earlier date.

2. Information on a newly permitted well will be held confidential only upon receipt by the division of a written request from the owner or operator.

3. The period of confidentiality may begin at the time the APD is submitted for approval if a request for confidentiality is received at that time. The information on the application itself will not be considered confidential.

4. Information that shall be held confidential includes well logs, electrical or radioactivity logs, electromagnetic, electrical, or magnetic surveys, core descriptions and analysis, maps, other geological, geophysical, and engineering information, and well completion reports that contain such information.

5. The owner or operator shall clearly mark documents as confidential. Such marking shall be in red and be clearly visible.

6. Confidential wells or information shall be reported separately from wells or information that is not in confidential status.

R649-2-12. Tests and Surveys.

1. When deemed necessary or advisable the Director or authorized agent can require that tests or surveys be made to determine the presence of waste of oil, gas, water, or reservoir energy; the quantity of oil, gas or water; the amount and direction of deviation of any well from the vertical; formation, casing, tubing, or other pressures; or any other test or survey deemed necessary to carry out the purposes of the Oil and Gas Conservation Act.

2. Directional, deviation, and/or measurements-while-drilling (MWD) surveys must be run on horizontal wells and submitted in accordance with R649-3-21, Well Completion and Filing of Well Logs, as amended for horizontal wells.

KEY: consenting, nonconsenting, oil, pooling
September 21, 2017 40-6-1 et seq.
Notice of Continuation August 26, 2016

R651. Natural Resources, Parks and Recreation.
R651-412. Curriculum Standards for OHV Education Programs Offered by Non-Division Entities.
R651-412-1. Rulemaking Authority.

Section 41-22-31 UCA states that the Board shall develop curriculum standards for a comprehensive OHV education program designed to instill the necessary knowledge, attitudes, skills necessary for safe OHV operation, and that the Division shall cooperate with the appropriate public and private organizations in the implementation of this program.

R651-412-2. Course Approval Process.

Outside providers wishing to have OHV education courses approved by the Division as adequate for meeting Utah's OHV education standard shall submit a copy of their proposed curricula to the for evaluation. The Division shall evaluate the proposed curricula against the standard specified in this rule and shall issue a letter of approval to providers who present curriculum packages that meet the standard.

R651-412-3. Course Completion.

Individuals who complete a training course approved under this rule shall be issued an OHV Education Certificate in accordance with 41-22-31 UCA.

R651-412-4. Curriculum Standards.

At a minimum, all courses approved by the Division shall provide the following course content and shall be presented at a level appropriate for the average fourth grade student. The method of course content delivery is not specified.

(a) Description of OHV riding in Utah.
(b) Utah State Parks regulatory responsibilities.
(c) OHV terminology including, but not imited, to: throttle, fuel shut-off valve, brakes, shift leer, engine stop switch, choke, spark arrestor/muffler, headlights, engine, footrest, ignition switch.
(d) Utah State Laws.
(e) Riding positions, turning and stopping.
(f) Hypothermia, wind chill and cold weather survival.
(g) Riding on different types of terrain.
(h) Pre-ride inspections.
(i) Towing a trailer.
(ii) Crossing roads and highways.
(iii) Dangers of drugs and alcohol.
(i) Ethics, responsible riding and trail etiquette.
(j) Tread Lightly
(k) Proper safety equipment.
(l) Snowmobile courses will also include avalanche safety information.
(m) Any hands-on training provided by an authorized provider shall be conducted in accordance with and all applicable state and federal law.

KEY: OHV education standards, parks
September 21, 2017 41-22-30
Notice of Continuation January 22, 2015

R653. Natural Resources, Water Resources.
R653-2. Financial Assistance from the Board of Water Resources.
R653-2-1. Purpose.

The purpose of this rule is to provide the standards and procedures for providing technical and financial assistance to water users to achieve the highest beneficial use of water resources within the state, and for utilizing the Water Infrastructure Restricted Account described in Title 73, Chapter 10g, Utah Code Annotated.

R653-2-2. Description of Revolving Loan Programs.

(1) The Board of Water Resources (Board) administers three revolving construction funds: the Revolving Construction Fund, the Cities Water Loan Fund, and the Conservation and Development Fund. Funding is available for projects that conserve, protect, or more efficiently use present water supplies, develop new water, or provide flood control. Project facilities may be constructed in another state if project water is to be used within the state of Utah.

(a) The Board will fund projects based on the following prioritization system:

(i) Projects which involve public health problems, safety problems, or emergencies.

(ii) Municipal water projects that are required to meet an existing or impending need.

(iii) Agricultural water projects that provide a significant economic benefit for the local area.

(iv) Projects which will receive a large portion of their funding from other sources.

(v) Projects not included in items 1-4, but which have been authorized by the Board, are funded on a first-come-first-served basis.

(b) The Board will not fund the following types of projects:

(i) Projects that are, in the opinion of the Board, routine or regularly occurring system operation and maintenance.

(ii) Domestic water systems where fewer than 50% of the residents live in the project area year-round.

(iii) Projects sponsored by developers.

(iv) Projects sponsored by individuals or families.

(c) General guidelines of each of the Board's funding programs are:

(i) Revolving Construction Fund (RCF):

(A) In the RCF, the Board will accept applications from incorporated groups such as mutual irrigation and water companies.

(B) The RCF advances financial assistance to the following types of projects:

(1) Irrigation projects costing less than $1,000,000.

(2) Rural culinary projects costing less than $1,000,000 that involve mutual irrigation and water companies.

(3) Dam Safety Studies

(C) The staff will recommend repayment terms in the feasibility report it will prepare. Interest will not be charged.

(ii) Cities Water Loan Fund (CWLF):

(A) Through the CWLF, the Board may finance the construction of municipal water facilities for political subdivisions of the state such as cities, towns, and districts.

(B) The staff will recommend repayment terms and interest rates in the feasibility report it will prepare.

(iii) Conservation and Development Fund (C and D):

(A) Through the C and D, the Board may finance the construction of water projects sponsored by incorporated groups, political subdivisions of the state, the federal government, or Indian tribes.

(B) The staff will recommend repayment terms and interest rates in the feasibility report it will prepare.

R653-2-3. Application Procedure.

(1) Applicants shall submit a completed application form directly to the member of the Board residing in the river district in which the project is located. If the Board member determines the application meets general Board guidelines, the Board member will sign the application and forward it to the Division of Water Resources (Division) for action.

(2) Additional information not specifically requested on the application form should also be furnished when such information would be helpful in appraising the merits of the project.

(3) An application form can be obtained from the Division, a Board member, or the Division's website (www.water.utah.gov).

R653-2-4. Project Funding Process.

(1) After the application for assistance has been completed by the sponsor/applicant, signed by the Board member, and forwarded to the Division, a three-step process will be followed to determine those projects which will be funded by the Board.

(2) The three steps of the funding process are:

(a) APPROVAL for Staff Investigation:

(i) The Board member considers the proposed project to fall within the Board's general statutory authority.

(ii) Division staff will prepare a feasibility report covering the general scope of the proposed project but focusing on technical, financial, legal, and environmental aspects, water needs and rights, and water users' support.

(b) AUTHORIZATION:

(i) The feasibility report will be presented to the Board, which will consider the project for authorization on the basis of its merits and overall feasibility and the contribution the project will make to the general economy of the area and the state.

(ii) As part of its decision-making process, the Board considers it important to discuss the merits of the project with the sponsor. Therefore, representatives of the project sponsor must attend the Board meeting when the project is considered for authorization.

(iii) If the project is authorized by the Board, a letter outlining the engineering and legal requirements for the project and other conditions of the financial assistance will be sent to the sponsor. For example, some of the more common conditions of these projects are:

(A) Obtain all easements, rights-of-way, and permits required to construct, operate, and maintain the project.

(B) Pass a company resolution to assign properties, easements, and water rights required for the project to the Board.

(C) Enter into a contract with the Board for construction of the project and subsequent purchase from the Board.

(D) Obtain approval of final plans and specifications from the Division.

(E) Prepare a Water Management and Conservation Plan.

(F) Adopt an ordinance prohibiting municipal irrigation of landscapes between the hours of 10:00 a.m. and 6:00 p.m.

(G) Adopt a progressive water rate schedule (municipal projects).

(H) Submit a letter noting completion and acceptance of a Water Conveyance Facilities Management Plan as described in and within the time frame required by Utah Code 73-10-33 (2010 First Substitute House Bill 60); and

(I) Be in compliance with Utah Code 17-27a-211 (2010 House Bill 298) which requires a canal company or canal operator to provide stated information to the county.

(c) COMMITTAL OF FUNDS:

(i) After the sponsor has complied with the Board requirements and conditions, the project will be presented for final review. If the Board finds the project to be in order and ready for construction, and IF FUNDS ARE AVAILABLE, the

Board will commit funds and direct its officers to enter into the necessary agreements to secure project financing.

(ii) The project sponsor will not normally be required to attend the Board meeting at which funds are to be committed for the project. If the project scope or cost estimate has changed substantially, the sponsor may be asked to attend the meeting to discuss the changes with the Board.

R653-2-5. Dam Safety Grants and Loans.

(1) After the application for assistance has been completed and signed by the Board member, the application will be submitted to the Division for review. The Division staff will review the application for compliance with the Dam Safety Act and requirements, if any, placed on the sponsor by the State Engineer.

(2) A report will be prepared by the Division presenting its findings and recommending the amount of the grant and repayment terms for loans.

(3) Grants will be considered when money is appropriated by the Utah State Legislature (legislature) and will be restricted by limitations placed on the funding by the legislature and Board.

(4) The amount of each grant will be based on conditions determined by the legislature on the money appropriated, degree of hazard assigned to the project dam, and/or by analysis of such items as the number of acres irrigated, the number of water users, the size of the reservoir, the use of the waters, and cost of the proposed improvements.

R653-2-6. Financial Arrangements (RCF, CWLF, C and D).

(1) Project Cost Sharing:

(a) The Board desires to optimize available funding through the overall water development programs of the state and therefore requires sponsors to share in the cost of projects.

(b) The sponsor's financial ability to cost share will be determined in the project investigation. On the basis of the investigation, the Division will recommend to the Board the portion of the project cost to be furnished by the sponsoring organization.

(c) If additional funds become available to the sponsor after the project is authorized, and if project costs do not increase, the additional funds will be used to reduce the Board's financial participation.

(2) Alternate Financing:

The Board will consider alternative project funding methods such as letters of credit, bond insurance, and various methods of interest buydown, instead of directly funding construction of project features.

(3) Repayment of Financial Assistance:

(a) The repayment period will generally be less than 25 years.

(b) The minimum annual cost of water for municipal projects will be 1.17% of the region or project area's annual median adjusted gross income. The percentage will increase with income.

(c) When annual payments are to be made with revenues from the sale or use of project water, the Board may allow the sponsor one year's use of the project before the first payment is due.

(4) Security Arrangements:

(a) Depending upon the type of organization sponsoring the project and the Board fund involved, financial assistance may be secured either by a purchase agreement or bond issue.

(i) Projects financed through the RCF must be secured by a purchase agreement.

(ii) Projects financed through the CWLF or the C and D Fund will be secured either by a purchase agreement or by the sale of a bond.

(b) If project financing is secured by a purchase agreement, the following conditions apply:

(i) The Board must take title to the project including water rights, easements, deeded land for project facilities, and other assets subject to security interest.

(ii) An opinion from the sponsor's attorney must be submitted stating the sponsor has complied with its articles and bylaws, state law, and the Board's contractual requirements.

(iii) Title to the project shall be returned to the sponsor upon successful completion of the purchase agreement.

(c) If project financing is secured by the sale of a bond, the following conditions apply:

(i) The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act.

(ii) If the sponsor desires to issue a non-voted revenue bond, the sponsor will be required to:

(A) Hold a public meeting to describe the project and its need, cost, and effect on water rates.

(B) Give written notice describing the proposed project to all water users in the sponsor's service area. The notice shall include a solicitation of response to the proposed project. A copy of all written responses received by the sponsor shall be forwarded to the Division. If the area Board member determines there is substantial opposition to the project, the Board may require the sponsor to hold a bond election before funds will be made available.

R653-2-7. Project Engineering and Construction for projects funded through the RCF, CWLF, and C and D Funds.

(1) Engineering.

To expedite projects and facilitate the coordination of project development, sponsors are encouraged to select a design engineer prior to making application to the Board.

(2) Staff and Legal Costs:

(a) Costs incurred by the Division for investigation, administration, engineering, and construction inspection will be paid to the Board according to the terms set by the Board.

(b) Costs incurred by the Division during project investigation will not become a charge to the sponsor if the project is found infeasible, denied by the Board, or if the sponsor withdraws the application.

(c) Legal fees incurred in the review of a sponsor's bonding documents will be billed directly to the sponsor by the legal firm doing the review for the Board.

(3) Design Standards and Approval:

(a) All projects funded by the Board shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah Registered Professional Engineer responsible for the work.

(b) Prior to soliciting construction bids, plans and specifications must be approved by the Division and all other state and federal agencies that have regulatory or funding involvement in the project.

(4) Project Bidding and Construction:

(a) The Board desires that all project construction be awarded to qualified contractors based on competitive bids. The Board may waive this requirement and allow a sponsor to act as its own contractor on small projects. However, in all cases the sponsor must comply with the laws governing its operation as well as the statutory requirements placed on the Board and Division.

(b) The design engineer shall coordinate the project bidding process.

(c) Construction inspection will be performed under the direction of the Registered Professional Engineer having responsible charge of project construction.

R653-2-8. Description of Water Infrastructure Restricted Account (WIRA).

(1) The Board administers the Water Infrastructure Restricted Account (WIRA) for development of the state's undeveloped share of the Colorado and Bear rivers, pursuant to existing interstate compacts governing both rivers as described in Title 73, Chapter 28, Lake Powell Pipeline Development Act and Chapter 26, Bear River Development Act.

(a) The Board will determine the need for funding investigation and construction aspects of developing the Colorado and Bear rivers.

(b) The Board will authorize expenditures from the WIRA.

(c) Any money utilized to construct water infrastructure to develop the state's share of the Colorado and Bear rivers is subject to the repayment provisions of the Lake Powell Pipeline Development Act and the Bear River Development Act.

(i) Beneficiaries of projects to develop the Colorado and Bear rivers as described in the Lake Powell Pipeline Development Act and Bear River Development Act will be required to provide at least 10% of the project cost.

(ii) Funding for the Lake Powell Pipeline and Bear River Development will be secured by a water sales agreement as described in the Lake Powell Pipeline Development Act and the Bear River Development Act.

(2) The Board administers the WIRA for the repair, replacement, or improvement of federal water infrastructure projects developed for local sponsors in the State of Utah when federal funds are not available. Local sponsors may apply for this funding whether the project is owned or operated by the U.S. government or local sponsor.

(a) Any money utilized for the repair, replacement, or improvement of federal water infrastructure projects when federal funds are not available shall be repaid pursuant to the terms and conditions established by the Board and Division by rule, as specified under Section 73-10g-105, Utah Code Annotated.

(b) Applicants shall apply for WIRA funds for federal water infrastructure projects through the same procedure as stated in R653-2-3, Application Procedure.

(c) Federal water infrastructure projects will be funded through the same process as stated in R653-2-4, Project Funding Process.

(d) Federal water infrastructure projects or phases of such projects will be prioritized based the same criteria as stated in R653-2-2.1(a).

(e) Projects financed through WIRA for the replacement and improvement of federal water infrastructure projects will be secured by the sale of a bond by the local sponsor to the Board.

R653-2-9. Financial Arrangements (WIRA).

(1) For State projects to develop the Colorado and Bear rivers, the Board and contracting entity shall, by contractual agreement, establish when water developed by the project will be delivered, the quantity of water delivered, the cost sharing between the Board and the sponsor, and the terms for repaying the Board's share of the project cost including the purchase term, interest rate, and cost per acre-foot of water purchased.

(2) For Federal water infrastructure projects, the sponsor's financial ability to cost share will be determined in the project investigation. On the basis of the investigation the Division will recommend to the Board the portion of the project cost to be furnished by the sponsoring organization. If additional funds become available to the sponsor for the project after the Board has authorized it, and if project costs do not increase, the additional funds will be used to reduce funding from the WIRA.

(3) Alternate Financing:

The Board will consider alternative project funding methods such as letters of credit, bond insurance, and various methods of interest buydown, instead of directly funding construction of project features.

(4) Repayment of Financial Assistance:

(a) The repayment period will be determined in the project investigation.

(b) When annual payments are to be made with revenues from the sale or use of project water, the Board may allow the sponsor one year's use of the project before the first payment is due.

(5) Security Arrangements:

(a) WIRA funding will be secured by a bond issue.

(b) The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act.

(c) If the sponsor desires to issue a non-voted revenue bond, the sponsor will be required to:

(i) Hold a public meeting to describe the project and its need, cost, and effect on water rates.

(ii) Give written notice describing the proposed project to all water users in the sponsor's service area. The notice shall include a solicitation of response to the proposed project. A copy of all written responses received by the sponsor shall be forwarded to the Division. If the area Board member determines there is substantial opposition to the project, the Board may require the sponsor to hold a bond election before funds will be made available.

(6) Priority Master List:

(a) The owners/operators of eligible federal water infrastructure projects will submit a list of anticipated repairs, replacements, or improvements of their federal water infrastructure projects, including the expected construction dates, project costs, and WIRA fund requests. These lists will be incorporated into a master list of potential projects, which will be prioritized according to R653-2-8, Subsection 2(d) and subject to the availability of funds.

(b) A master list of potential projects will be prioritized by the Division of Water Resources by July 1, 2017 and every two years thereafter, and will be maintained for all potential sponsors.

(c) Funding of projects will be prioritized by the Board.

R653-2-10. Project Engineering and Construction for projects funded through the Water Infrastructure Restricted Account (WIRA).

(1) For State projects to develop the Colorado and Bear rivers:

(a) Once a project has moved from planning stage to development stage:

(i) Costs incurred by the Division for engineering, environmental and cultural resource studies, permitting, design and construction engineering, and construction inspection will be paid to the Board according to the terms set by Title 73, Chapter 26 and Chapter 28.

(ii) Costs for Division staff time during project planning will not become a charge to the sponsor.

(b) Design Standards and Approval for State projects:

(i) State projects for the development of the Colorado and Bear rivers, shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah Registered Professional Engineer responsible for the work.

(ii) Prior to soliciting construction bids, plans and specifications must be approved by the Division and all other state, neighboring state, and federal agencies which have regulatory or funding involvement in the project. Additionally, all required records of decision, permits, authorizations, and agreements must be obtained from these agencies.

(2) For Federal water infrastructure projects:

(a) Costs incurred by the Division for planning and development will be paid to the Board pursuant to the terms and conditions established by the Board and Division under Section 73-10g-105.

(b) Design Standards and Approval for Federal projects:

(i) All Federal water infrastructure projects shall be

designed according to appropriate technical standards and shall be stamped and signed by a Utah Registered Professional Engineer responsible for the work.

(ii) Prior to soliciting construction bids for any phase of a project, plans and specifications for that phase must be approved by the Division and all other state and federal agencies which have regulatory or funding involvement in the project. Additionally, all required local, state, and federal licenses and permits for that phase of the project must be obtained before construction of that phase begins.

(iii) All required local, state, and federal licenses and permits for a phase of a project must be obtained before construction of that phase begins.

(3) Project Bidding and Construction:

(a) The Board will require that all project construction be awarded to qualified contractors based on competitive bids. Alternative project delivery methods may be considered instead of traditional 'design-bid-build' methods; however, these must be done in compliance with industry-approved standards and must be first approved by the Board.

(b) The design engineer or project manager shall coordinate the project bidding process.

(c) Construction inspection will be performed under the direction of the project manager who shall be a Registered Professional Engineer licensed in Utah, and any other applicable state.

(4) Staff and Legal Costs:

(a) Costs incurred by the Division for investigation and administration will be paid to the Board according to the terms set by the Board.

(b) Costs incurred by the Division during project investigation will not become a charge to the sponsor if the project is found infeasible, denied by the Board, or if the sponsor withdraws the application.

(c) Legal fees incurred in the review of a sponsor's bonding documents will be billed directly to the sponsor by the legal firm doing the review for the Board.

R653-2-11. Qualifications to Guidelines.

The foregoing guideline statements are meant as a guide for the Board, staff, and sponsor to provide an orderly and effective procedure for preparing projects for construction. The Board reserves the right to consider each project on its own merits and may consider and authorize a project that does not meet all requirements of the guidelines.

KEY: water funding
November 23, 2015 73-10
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R653. Natural Resources, Water Resources.
R653-3. Selecting Private Consultants.
R653-3-1. Application.

The provisions of this section apply to procurement of services within the scope of the practice of professional engineering as defined in Section 58-22-102 Utah Code Annotated, except as authorized in Section 63-56-24 Utah Code Annotated (Emergency Procurements).

R653-3-2. Policy.

It is the policy of the Division of Water Resources (Division) to:

(1) Give public notice of all requirements for engineering services (except as noted in R653-3-1 and R653-3-5); and

(2) Negotiate contracts for such services on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.

R653-3-3. Annual Statement of Qualifications and Performance Data.

(1) The State's Chief Procurement Officer will encourage firms engaged in providing engineer services to submit annually a statement of qualifications and performance data which should include, but not be limited to, the following:

(a) The name of the firm and the location of all of its offices, specifically indicating the principal place of business;

(b) The age of the firm and its average number of employees over the past five years;

(c) The education, training, and qualifications of members of the firm and key employees;

(d) The experience of the firm reflecting technical capabilities and project experience;

(e) The names of five clients who may be contacted, including at least two for whom services were rendered in the last year; and

(f) Any other pertinent information requested by the Procurement Officer.

(2) A standard form or format may be developed for these statements of qualifications and performance data. Firms may amend statements of qualifications and performance data at any time by filing a new statement.

R653-3-4. Billing Rate Survey.

The Consulting Engineers Council of Utah will provide the results of an annual survey on billing rates within their respective disciplines to the Division of Purchasing prior to April 1 of each year. This information will then be made available to all public procurement units.

R653-3-5. Small Purchases of Engineer Services.

When the procurement of engineer services is estimated to be less than $20,000, the Division may select the provider directly from either the list of firms who have submitted annual statements of qualifications and performance data, or from other qualified firms if necessary. If the procurement is estimated to exceed $20,000, then the selection method outlined in the following sections will apply.

R653-3-6. Engineer Selection Committee.

The Division's Procurement Officer, or designee, will designate members of the Engineer Selection Committee. The selection committee will consist of at least three members.

The Division's Procurement Officer, or designee, will designate one member of such committee as chair and to act as the Procurement Officer to coordinate the negotiations of a contract with the most qualified firm.

R653-3-7. Public Notice.

Public notice for engineer services will be given by the Division. Such notice will be published sufficiently in advance in order for firms to have an adequate opportunity to respond to the solicitation. The notice will contain a brief statement of the services required that adequately describes the project, the closing date for submissions, and how specific information on the project may be obtained.

R653-3-8. Request for Statements of Interest.

(1) A request for statements of interest (SOI) will be prepared that outlines the Division's requirements (scope of work) and sets forth the evaluation criteria. It will be distributed upon request and payment of a fee, if any.

(2) The request for SOI will include notice of any conference to be held and the criteria to be used in evaluating the statements of qualifications and performance data and selecting firms, including but not limited to:

(a) Competence to perform the services as reflected by technical training and education, general experience, experience in providing the required services, and the qualifications and competence of persons who will be assigned to perform the services;

(b) Ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously; and

(c) Past performance as reflected by the evaluations of private persons and officials of other governmental entities that have retained the services of the firm with respect to such factors as control of costs, quality of work, and an ability to meet deadlines.

R653-3-9. Definition of Scope of Work.

Prior to initiating a request for SOI for engineer services, the Division shall define the scope of such services. The scope section will be sufficient to define the work expected, as detailed as possible and will be the basis for the negotiation process. However the scope may be modified if necessary during final negotiations.

R653-3-10. Evaluation of Statements of Qualifications and Performance Data.

(1) The selection committee will evaluate:

(a) Statement of qualifications and performance data;

(b) Statements that may be submitted in response to the request for SOI for engineer services, including proposals for joint ventures; and

(c) Supplemental statements of qualifications and performance data, if their submission is required.

(2) All statements and supplemental statements of qualifications and performance data will be evaluated in light of the criteria set forth in the SOI request for engineer services.

R653-3-11. Selection of Firms for Discussions.

The selection committee will select for discussions no fewer than three firms evaluated as being professionally and technically qualified (unless fewer than three firms responded to the SOI request. The Division will notify each firm in writing of the date, time, and place of discussions, and, if necessary, will provide each firm with additional information on the project and the services required. This discussion phase may be waived if the evaluation of the statements of qualification and performance data indicate that one firm is clearly more qualified and if the scope and nature of the services are clearly understood.

R653-3-12. Discussions.

Following evaluation of the statements of interest, qualifications and performance data, the selection committee may hold discussions with the firms selected. The purposes of such discussions will be to:

(1) Determine each firm's general capabilities and qualifications for performing the contract; and

(2) Explore the scope and nature of the required services and the relative accuracy, efficiency, time consumption, and cost of the alternative methods proposed to be used.

R653-3-13. Selection of the Most Qualified Firms.

After discussions the selection committee will reevaluate and select, in order of preference, the firms that it deems to be the most highly qualified to provide the required services. The selection committee will document the selection process indicating how the evaluation criteria were applied in determining the selection of the most highly qualified firms. Documents will remain in the division files for one year.

R653-3-14. Negotiation and Award of Contract.

The selection committee or its designee will negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable to the Division. Contract negotiations will be directed toward:

(1) Clarifying that the firm has an understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

(2) Insuring that the firm will make available the necessary personnel and facilities to perform the services within the required time; and

(3) Agreeing to a compensation that is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.

R653-3-15. Failure to Negotiate Contract with the Most Qualified Firm.

(1) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified firm, the Division will advise the firm in writing of the termination of negotiations.

(2) Upon failure to negotiate a contact with the most qualified firm, the Procurement Officer will enter into negotiations with the next most qualified firm. If fair and reasonable compensation, contract requirements, and contract documents can be agreed upon, then the contract will be awarded to that firm. If negotiations again fail, negotiations will be terminated as provided in paragraph (a) of this section and commenced with the next most qualified firm.

R653-3-16. Notice of Award.

Written notice of the award will be sent to the firm with whom the contract is successfully negotiated. Each firm with whom discussions were held will be notified of the award. Notice of the award will be made available to the public.

R653-3-17. Failure to Negotiate Contract With Firms Initially Selected as Most Qualified.

Should the Division be unable to negotiate a contract with any of the firms initially selected as the most highly qualified firms, additional firms will be selected in preferential order based on their respective qualifications, and negotiations shall continue in accordance with Section R653-3-15 until an agreement is reached and the contract awarded.

KEY: consultants, government purchasing
February 18, 1998 58-22-102
Notice of Continuation September 29, 2017

R653. Natural Resources, Water Resources.
R653-4. Investigation Account.
R653-4-1. Authority and Purpose for the Account.

(1) The Water Resources Investigation Account was established by the legislature in 1953 and is authorized under Section 73-10-8.

(2) The purpose of the Account is to provide moneys for those purposes prescribed in Subsection 73-10-8(2).

R653-4-2. General Guidelines for Use of the Account.

(1) The funds from this Account will be used for projects which the Board of Water Resources deems eligible under the criteria for the Board of Water Resources Construction Fund and the Water Resources Conservation and Development Fund. When the Investigation Account is used for this purpose, the Account will be reimbursed from repayment obtained for the project, provided the project is authorized.

(2) The Investigation Account may also be used to fund special studies and investigations which relate to the State water planning effort as determined by the Board of Water Resources or the Director of the Division of Water Resources.

(3) Investigation Account funds have been and will continue to be used for, hiring consultants, paying salaries and expenses of staff personnel, subsurface investigations of dam sites and wells, hydrologic and water quality data collections, purchasing technical equipment for use in investigations and construction of water projects, working with the Federal Government on various studies requested by it, and performing environmental studies.

KEY: water conservation, water policy*
March 18, 1998 **73-10-8**
Notice of Continuation September 29, 2017

R653. Natural Resources, Water Resources.
R653-5. Cloud Seeding.
R653-5-1. Definitions.

Terms used in this rule are defined as follows:

(1) "Act" or "Cloud Seeding Act" means the 1973 CLOUD SEEDING TO INCREASE PRECIPITATION ACT, Title 73, Chapter 15.

(2) "Cloud Seeding" or "Weather Modification" means all acts undertaken to artificially distribute or create nuclei in cloud masses for the purposes of altering precipitation, cloud forms, or other meteorological parameters.

(3) "Cloud Seeding Project" means a planned project to evaluate meteorological conditions, perform cloud seeding, and evaluate results.

(4) "Board" means the Utah Board of Water Resources, which is the policy making body for the Utah Division of Water Resources.

(5) "Director" means the Director of the Utah Division of Water Resources.

(6) "Division" means the Director and staff of the Utah Division of Water Resources.

(7) "License" means a certificate issued by the Utah Division of Water Resources certifying that the holder has met the minimum requirements in cloud seeding technology set forth by the State of Utah, and is qualified to apply for a permit for a cloud seeding project.

(8) "Licensed Contractor" means a person or organization duly licensed for cloud seeding activities in the State of Utah.

(9) "Permit" means a certification of project approval to conduct a specific cloud seeding project within the State under the conditions and within the limitations required and established under the provision of these Rules.

(10) "Sponsor" means the responsible individual or organization that enters into an agreement with a licensed contractor to implement a cloud seeding project.

R653-5-2. General Provisions.

(1) Authority: The State of Utah, through the Division, is the only entity, private or public, that may authorize, sponsor, or develop cloud seeding research, evaluation, or implementation projects to alter precipitation, cloud forms, or meteorological parameters within the State of Utah.

(2) Ownership of Water: All water derived as a result of cloud seeding shall be considered as a part of Utah's basic water supply the same as all natural precipitation water supplies have been heretofore, and all statutory provisions that apply to water from natural precipitation shall also apply to water derived from cloud seeding.

(3) Notice to State Engineer: The Director shall, by written communication, notify the Director of the Utah Division of Water Rights of cloud seeding permits within 45 days of issuance.

(4) Consultation and Assistance: The Division may contract with the Utah Water Research Laboratory, or any other individual or organization, for consultation or assistance in developing cloud seeding projects or in furthering necessary research of cloud seeding or other factors that may be affected by cloud seeding activities.

(5) State and County Cooperation: The Division shall encourage, cooperate, and work with individual counties, multi-county districts for planning and development, and groups of counties in the development of cloud seeding projects and issuance of permits.

(6) Statewide or Area-wide Cloud Seeding Project: The Division reserves the right to develop statewide or area-wide cloud seeding programs where it may contract directly with licensed contractors to increase precipitation. The Division may also work with individual counties, multi-county districts for planning and development, organizations or groups of counties, or private organizations, to develop Statewide or area-wide cloud seeding projects.

(7) Liability:

(a) Trespass - The mere dissemination of materials and substances into the atmosphere or causing precipitation pursuant to an authorized cloud seeding project, shall not give rise to any presumption that use of the atmosphere or lands constitutes trespass or involves an actionable or enjoinable public or private nuisance.

(b) Immunity - Nothing in these Rules shall be construed to impose or accept any liability or responsibility on the part of the State of Utah or any of its agencies, or any State officials or State employees or cloud seeding authorities, for any weather modification activities of any person or licensed contractor as defined in these Rules as provided in Title 63, Chapter 30.

(8) Suspension and Waiver of Rules - The Division may suspend or waive any provision of this rule on a case-by-case basis and by a writen memo signed by the Director. A suspension or waiver may be granted, in whole or in part, upon a showing of good cause relating to conditions of compliance or application procedures; or when, in the discretion of the Director the particular facts or circumstances render suspension or waiver appropriate.

R653-5-3. Utah Board of Water Resources.

(1) Review of License and Permit: The Board may review applications for Licenses and Permits and submit recommendations to the Director for his consideration for action on the applications.

(2) Policy Recommendations: The Board may advise and make recommendations concerning legislation, policies, administration, research, and other matters related to cloud seeding and weather modification activities to the Director and technical staff of the Division.

R653-5-4. Weather Modification Advisory Committee.

(1) Creation of Weather Modification Advisory Committee: An advisory committee may be created by the Director. Members of this committee shall be appointed by the Director, and serve for a period of time as determined by the Director.

(2) Duties of Weather Modification Advisory Committee:

(a) Advise the Director and technical staff of the Division on applications for licenses and permits; and

(b) Advise and make recommendations concerning legislation, policies, administration, research, and other matters related to cloud seeding and weather modification activities to the Director and technical staff of the Division.

R653-5-5. License and Permit Required.

(1) License and Permit Required: It is unlawful for any person or organization, not specifically exempted by laws and this rule, to act or perform services as a weather modifier, without obtaining a license and permit as provided for in the Cloud Seeding Act and this rule.

(2) To Whom License May Be Issued: Licenses to engage in activities for weather modification and control shall be issued to applicants who meet the requirements set out in the Act and Section R653-5-6. If the applicant is an organization, these requirements shall be met by the individual or individuals who are to be in control and in charge of the applicant's weather modification operations.

(3) To Whom Permit May be Issued: A permit may be issued to a licensed contractor as prescribed in Section R653-5-7.

(4) License and Permit Not Required: Individuals and organizations engaging in the following activities are exempt from the license and permit requirements of this rule:

(a) Research performed entirely within laboratory

facilities;

(b) Cloud Seeding activities for the suppression of fog;

(c) Fire fighting activities where water or chemical preparations are applied directly to fires, without intent to modify the weather;

(d) Frost and fog protective measures provided through the application of water or heat by orchard heater, or similar devices, or by mixing of the lower layers of the atmosphere by helicopters or other type of aircraft where no chemicals are dispensed into the atmosphere, other than normal combustion by-products and engine exhaust; and

(e) Inadvertent weather modification, namely emissions from industrial stacks.

(5) Effective Period of License: Each license shall be issued for a period of one year. A licensee may renew an expired license in the manner prescribed by this rule.

(6) Effective Period of Permit: Each permit shall be issued for a period as required by a proposed cloud seeding project, but not exceeding one year.

R653-5-6. Procedures for Acquisition and Renewal of License.

(1) Application For License: In order to qualify for a cloud seeding license an applicant must:

(a) Submit a properly completed application to the Division; and

(b) Submit to the Division evidence of: i) the possession by the applicant of a baccalaureate or higher degree in meteorology or related physical science or engineering and at least five years experience in the field of meteorology, or ii) other training and experience as may be acceptable to the Division as indicative of sufficient competence in the field of meteorology to engage in cloud seeding activities.

(2) Renewal of License: A licensee may qualify for a renewal of a license by submitting an application for renewal. If an organization has hired replacement personnel, the organization shall attach to its application for renewal a statement setting forth the names and qualifications of qualified personnel.

R653-5-7. Procedures for Acquisition of Permit.

(1) Application for Permit: To qualify for a cloud seeding permit a licensee must:

(a) Submit a properly completed application to the Division;

(b) Submit proof of financial responsibility in order to give reasonable assurance of protection to the public in the event it should be established that damages were caused to third parties as a result of negligence in carrying out a cloud seeding project;

(c) Submit a copy of the contract or proposed contract between the sponsor and licensed contractor relating to the project;

(d) Submit the plan of operation for the project, including a map showing locations of all equipment to be used as well as equipment descriptions;

(e) Receive preliminary approval of the project from the Director before proceeding with notices of intent described in R653-5-7(7) and (8) of this rule.

(f) File with the Division a notice of intention for publication which sets forth the following:

(i) the name and address of the applicant;

(ii) statement that a cloud seeding license has been issued by the Division;

(iii) the nature and the objective of the intended operation, and the person or organization on whose behalf it is to be conducted;

(iv) the specific area in which, and the approximate date and time during which the operation will be conducted;

(v) the specific area which is intended to be affected by the operation;

(vi) the materials and methods to be used in conducting the operation; and

(vii) a statement that persons interested in the permit application should contact the Division.

(g) File with the Division, within 15 days from the last date of the publication of notice, proof that the applicant caused the notice of intention to be published at least once a week for three consecutive weeks in a newspaper having a general circulation within each county in which the operation is to be conducted and in which the affected area is located. Publication of notice shall not commence until the applicant has received approval of the form and substance of the notice of intention from the Director.

(2) Description of a Permit: A licensee shall comply with all the requirements set out in his permit. A permit shall include the following:

(a) The effective period of the permit, which shall not exceed one year;

(b) The location of the operation;

(c) The methods which may be employed; and

(d) Other necessary terms, requirements, and conditions.

(3) Authority to Amend a Permit: The Division may amend the terms of a permit after issuance if it determines that it is in the public interest.

R653-5-8. Revocation and Suspension of Licenses and Permits.

(1) Automatic Suspension of a Permit: Any cloud seeding permit issued under the terms of this rule shall be suspended automatically if the licensee's cloud seeding license should expire, or in the case of an organization being the licensee, if the person listed on the application for the permit as being in control of, and in charge of, operations for the licensee should become incapacitated, leave the employment of the licensee, or for any other reason be unable to continue to be in control of, and in charge of, the operation in question; and a replacement approved by the Director, has not been obtained.

(2) Reinstatement of Permit: A permit which is suspended, may be, at the discretion of the Director, reinstated following renewal of the expired license, or submission of an amended personnel statement nominating a person whose qualifications for controlling and being in charge of the operation are acceptable to the Director.

(3) Director's Authority to Suspend or Revoke Licenses and Permits: The Director may suspend or revoke any existing license or permit for the following reasons:

(a) If the licensee no longer possesses the qualifications necessary for the issuance of a license or permit;

(b) If the licensee has violated any of the provisions of the Cloud Seeding Act;

(c) If the licensee has violated any of the provisions of this rule; or

(d) If the licensee has violated any provisions of the license or permit.

R653-5-9. Record Keeping and Reports.

(1) Information to be Recorded: Any individual or organization conducting weather modification operations in Utah shall keep and maintain a record of each operation conducted. For the purposes of this Section, the daily log required by Title 15, Chapter IX, Sub-Chapter A, Part 908, Section 908.8 (a), Code of Federal Regulations, November 1, 1972, as amended, and the supplemental information required by Sections 908.8 (b), (c), and (d) will be considered adequate, provided that each applicant for a weather modification permit submit with the application a list containing the name and post office address of each individual who will participate or assist in the operation, and promptly report any changes or additions

to this list to the Division.

(2) Reports:

(a) Each individual and organization conducting weather modification operations in Utah shall submit copies of the daily log and supplemental information for each month, to the Division by the last day of each succeeding month.

(b) Information copies of all other reports required by Title 15, Chapter IX, Sub-Chapter A, Part 908, Sections 908.5, 908.6, and 908.7, Code of Federal Regulations, shall be submitted to the Division as soon as practicable, but in no case later than the deadlines set by the Federal Regulation.

(c) Copies of all reports, publications, pamphlets, and evaluations made by either the licensed contractor or sponsor regarding a cloud seeding project must be submitted to the Division at the time these are made public.

(d) In relation to any evaluations made for cloud seeding effectiveness, both the method of evaluation and the data used shall be submitted to the Division.

KEY: weather modification, water policy
January 7, 2004 73-15
Notice of Continuation September 29, 2017

R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(d) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(e) "Daily limit" means the maximum limit, in number or amount, of protected aquatic wildlife that one person may legally take during one day.

(f) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(g) "Camp" means, for the purposes of this rule, any place providing temporary overnight accommodation for anglers including a camper, campground, tent, trailer, cabin, houseboat, boat, or hotel.

(h) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(i) "Commercially prepared and chemically treated baitfish" means any fish species or fish parts which have been processed using a chemical or physical preservation technique other than freezing including irradiation, salting, cooking, or oiling and are marketed, sold or traded for financial gain as bait.

(j) "Dipnet" means a small bag net with a handle that is used to scoop fish or crayfish from the water.

(k) "Filleting" means the processing of fish for human consumption typically done by cutting away flesh from bones, skin, and body.

(l) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(m) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(n) "Free Shafting" means to release a pointed shaft that is not tethered or attached by physical means to the diver in an attempt to take fish while engaged in underwater spearfishing.

(o) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(p) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(q) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(r) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(s) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(t) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(u) "Liftnet" means a small net that is drawn vertically through the water column to take fish or crayfish.

(v) "Motor" means an electric or internal combustion engine.

(w) "Nongame fish" means species of fish not listed as game fish.

(x) "Permanent residence" means, for the purposes of this rule only, the domicile an individual claims pursuant to Utah Code 23-13-2(13).

(y) "Possession limit" means, for purposes of this rule only, two daily limits, including fish in a cooler, camper, tent, freezer, livewell or any other place of storage, excluding fish stored in an individual's permanent residence.

(z) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(aa) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(bb) "Seine" means a small mesh net with a weighted line on the bottom and float line on the top that is drawn through the water. This type of net is used to enclose fish when its ends are brought together.

(cc) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(dd) "Single hook" means a hook or multiple hooks having a common shank.

(ee) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(ff) "Spear" means a long-shafted, sharply pointed, hand held instrument with or without barbs used to spear fish from above the surface of the water.

(gg) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(hh)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

(ii) "Underwater spearfishing" means fishing by a person swimming, snorkeling, or diving and using a mechanical device held in the hand, which uses a rubber band, spring, pneumatic power, or other device to propel a pointed shaft to take fish from under the surface of the water.

R657-13-3. Fishing License Requirements and Free Fishing Day.

(1) A license is not required on free fishing day, a

Saturday in June, annually. All other laws and rules apply.

(2) A person 12 years of age or older shall purchase a fishing license before engaging in any regulated fishing activity pursuant to Section 23-19-18.

(3) A person under 12 years of age may fish without a license and take a full daily and possession limit.

R657-13-4. Fishing Contests.

All fishing contests shall be held pursuant to R657-58 Fishing Contests and Clinics.

R657-13-5. Interstate Waters And Reciprocal Fishing Permits.

(1) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within Bear Lake as follows:

(i) an individual may fish with up to two poles on the Utah portion of Bear Lake; and

(ii) an individual must comply with Idaho regulations regarding fishing with more than one pole when fishing on the Idaho portion of Bear Lake.

(b) Only one daily limit may be taken in a single day even if licensed in both states. (2) Reciprocal Fishing Permits

(a) The purchase of a reciprocal fishing permit allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing permits are offered for Lake Powell and Flaming Gorge Reservoir (See Subsections (3) and (4)).

(c) Utah residents may obtain reciprocal fishing permits by contacting the state of Arizona for Lake Powell and the state of Wyoming for Flaming Gorge.

(d) Nonresidents may obtain reciprocal fishing permits through the division's web site, from online license agents and division offices.

(e) The reciprocal fishing permit must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state; and

(ii) signed by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state.

(f) Reciprocal fishing permits are valid for 365 days from the date of purchase.

(g) Anglers are subject to the laws and rules of the state in which they are fishing.

(h) Only one daily limit may be taken in a single day even if licensed in both states.

(3) Lake Powell Reservoir

(a) Any person qualifying as an Arizona resident and having in their possession a valid resident Arizona fishing license and a Utah reciprocal fishing permit for Lake Powell can fish within the Utah boundaries of Lake Powell.

(b) Any person who is not a resident of Utah or Arizona must purchase the appropriate nonresident licenses for Utah and Arizona to fish both sides of Lake Powell.

(c) Any person possessing a valid Utah fishing license is permitted to fish anywhere on Lake Powell, including the Arizona portion of the reservoir.

(d) A person possessing a valid Arizona fishing license shall be required to purchase a valid Utah reciprocal permit to fish the Utah waters of Lake Powell.

(4) Flaming Gorge Reservoir

Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing permit for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than two lines is unlawful, except:

(a) while fishing for crayfish without the use of fish hooks as provided in R657-13-15; or

(b) while fishing through the ice at Flaming Gorge Reservoir as provided in R657-13-7.

(3) No artificial lure may have more than three hooks. (4) No line may have attached to it more than three baited hooks, three artificial flies, or three artificial lures, except for a setline.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With More than One Pole.

(1) A person may use up to two fishing poles to take fish on all waters open to fishing, provided they possess an unexpired fishing or combination license, except as provided in Subsection (2) below.

(2) A person may use up to six lines when fishing at Flaming Gorge Reservoir through the ice. When using more than one line at Flaming Gorge Reservoir, the angler's name shall be attached to each line, pole, or tip-up, and the angler shall check only their lines.

(3) Regardless of the number of poles or lines used, an angler may not take more than one daily limit or possess more than one possession limit. (4) When fishing on waters located within another state, a person must abide by that state's regulations regarding fishing with more than one pole.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2) A person may use up to two lines for angling while setline fishing. (3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained through the division's web site, from license agents and division offices.

(b) A setline permit is required in addition to any valid Utah fishing or combination license.

(c) A setline permit is a 365 day permit valid only when used in conjunction with any unexpired Utah fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished. (6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 12 years of age must purchase a valid Utah one day, seven day or annual fishing or combination license and setline permit in order to use a setline.

R657-13-9. Underwater Spearfishing.

(1) A person possessing a valid Utah fishing or combination license may engage in underwater spearfishing, only as provided in this Section.

(2) The following waters are open to underwater spearfishing from January 1 through December 31 for all species of game fish, unless specified otherwise by individual water:

(a) Big Sand Wash Reservoir (Duchesne County);

(b) Brown's Draw Reservoir (Duchesne County);

(c) Causey Reservoir (Weber County);

(d) Deer Creek Reservoir (Wasatch County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(e) East Canyon Reservoir (Morgan County), except underwater spearfishing for largemouth and smallmouth bass is

closed from April 1 through the fourth Saturday in June;

(f) Echo Reservoir (Summit County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(g) Electric Lake (Emery County);

(h) Fish Lake (Sevier County), except underwater spearfishing for any game fish is closed from September 16 to the first Saturday in June the following year;

(i) Flaming Gorge Reservoir (Daggett County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(j) Grantsville Reservoir (Tooele County);

(k) Ken's Lake (San Juan County);

(l) Lake Powell (Garfield, Kane and San Juan Counties), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(m) Newcastle Reservoir (Iron County), except underwater spearfishing is closed for all species of game fish other than wipers and rainbow trout;

(n) Pineview Reservoir (Weber County), except underwater spearfishing is closed for:

(i) largemouth and small mouth bass from April 1 through the fourth Saturday in June; and

(ii) tiger musky year round.

(o) Porcupine Reservoir (Cache County);

(p) Recapture Reservoir (San Juan County);

(q) Red Fleet Reservoir (Uintah County);

(r) Rockport Reservoir (Summit County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(s) Sand Lake (Uintah County);

(t) Smith-Moorehouse Reservoir (Summit County);

(u) Starvation Reservoir (Duchesne County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(v) Steinaker Reservoir (Uintah County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(w) Willard Bay Reservoir (Box Elder County); and

(x) Yuba Reservoir (Juab and Sanpete Counties).

(3) Nongame fish, excluding prohibited species listed in Section R657-13-13, may be taken by underwater spearfishing:

(a) in the waters listed in Subsection (2) and at Blue Lake (Tooele County) for tilapia and pacu only; and

(b) during the open angling season set for a given body of water.

(4) The waters listed in Subsections (2) and (3)(a) are the only waters open to underwater spearfishing for game or nongame fish, except carp may be taken by means of underwater spearfishing from any water open to angling during the open angling season set for a given body of water.

(5)(a) Underwater spearfishing is permitted from official sunrise to official sunset only, except burbot may be taken by underwater spearfishing at Flaming Gorge Reservoir (Daggett County) between official sunset and official sunrise.

(b) No other species of fish may be taken with underwater spearfishing techniques at Flaming Gorge Reservoir or any other water in the state between official sunset and official sunrise.

(6)(a) Use of artificial light is unlawful while engaged in underwater spearfishing, except artificial light may be used when underwater spearfishing for burbot at Flaming Gorge Reservoir (Daggett County).

(b) Artificial light may not be used when underwater spearfishing for fish species other than burbot at Flaming Gorge Reservoir.

(7) Free shafting is prohibited while engaged in underwater spearfishing.

(8) The daily limit and possession limit for underwater spearfishing is the same as the daily limit and possession limit applied to anglers using other techniques in the waters listed in Subsections (2) and (3)(a), and as identified in the annual Utah Fishing Guidebook issued by the Utah Wildlife Board.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to land game fish legally taken by angling. However, they may not be used as a primary method to take game fish from Utah waters except at Bear Lake where they are permitted for Bonneville Cisco.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

(4) Hand held dipnets may also be used to take crayfish and nongame fish, except prohibited fish.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted while angling, except when underwater spearfishing. However artificial light is permitted while underwater spearfishing for burbot in Flaming Gorge or while fishing for carp with a bow, crossbow, or spear statewide.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in Subsection R657-13-14(2) and Section R657-13-20.

(3)(a) A person may not possess a gaff while angling, or take protected aquatic wildlife by snagging or gaffing, except:

(i) a gaff may be used at Lake Powell to land striped bass; and

(ii) snagging may be used at Bear Lake to take Bonneville cisco.

(b) Except as provided in Subsection (3)(a)(ii) and Section R657-13-21, a fish hooked anywhere other than the mouth must be immediately released.

(4) Chumming is prohibited on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, to take protected aquatic wildlife is permitted on many public waters. However, boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1) Use or possession of corn, hominy, or live baitfish while fishing is unlawful, except as authorized by the Wildlife Board in the Fishing Guidebook.

(2) Use or possession of tiger salamanders (live or dead) while fishing is unlawful.

(3) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(4) Use or possession of artificial baits which are commercially imbedded or covered with fish or fish parts while fishing is unlawful.

(5) Use or possession of bait in the form of fresh or frozen fish or fish parts while fishing is unlawful, except as provided below and in Subsections (7) and (8).

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Big Sand Wash, Deer Creek, Echo, Fish Lake, , Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Red Fleet, Rockport, Starvation, Utah Lake, Willard Bay and Yuba reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) Dead striped bass, from Lake Powell, may be used as bait only in Lake Powell.

(f) Dead fresh or frozen salt water species including sardines and anchovies may be used as bait in any water where bait is permitted.

(g) Dead mountain sucker, white sucker, Utah sucker, redside shiner, speckled dace, mottled sculpin, fat head minnow, Utah chub, and common carp may be used as bait in any water where bait is permitted.

(h) Dead burbot, from Flaming Gorge Reservoir, may be used as bait only in Flaming Gorge Reservoir.

(6) Commercially prepared and chemically treated baitfish or their parts may be used as bait in any water where bait is permitted.

(7) The eggs of any species of fish caught in Utah, except prohibited fish, may be used in any water where bait is permitted. However, eggs may not be taken or used from fish that are being released.

(8) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(9) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

(10) On any water declared infested by the Wildlife Board with an aquatic invasive species, or that is subject to a closure order or control plan under R657-60, it shall be unlawful to transport any species of baitfish (live or dead) from the infested water for use as bait in any other water of the State. Baitfish are defined as those species listed in sections (5)(b), (5)(c), (5)(f) and (8).

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail (Gila elegans);

(b) Bluehead sucker (Catostomus discobolus);

(c) Colorado pikeminnow (Ptychocheilus lucius);

(d) Flannelmouth sucker (Catostomus latipinnis);

(e) Gizzard shad (Dorosoma cepedianum), except at Lake Powell;

(f) Grass carp (Ctenopharyngodon idella);

(g) Humpback chub (Gila cypha);

(h) June sucker (Chasmistes liorus);

(i) Least chub (Iotichthys phlegethontis);

(j) Northern Leatherside chub (Lepidomeda copei);

(k) Razorback sucker (Xyrauchen texanus);

(l) Roundtail chub (Gila robusta);

(m) Southern Leatherside chub (Lepidomede aliciae);

(n) Virgin River chub (Gila seminuda);

(o) Virgin spinedace (Lepidomeda mollispinis); and

(p) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) As provided in this Section, a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(2)(a) Except as provided in Subsection (2)(b), nongame fish may be taken by angling, traps, bow and arrow, liftnets, dipnets, cast nets, seine, or spear in any water of the state with an open fishing season.

(b) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, crossbow, spear, or underwater spearfishing statewide:

(i) San Juan River;

(ii) Colorado River;

(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);

(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);

(v) White River (Uintah County);

(vi) Duchesne River (from Myton to confluence with Green River);

(vii) Virgin River (Main stem, North, and East Forks).

(viii) Ash Creek;

(ix) Beaver Dam Wash;

(x) Fort Pierce Wash;

(xi) La Verkin Creek;

(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);

(xiii) Diamond Fork;

(xiv) Thistle Creek;

(xv) Main Canyon Creek (tributary to Wallsburg Creek);

(xvi) Provo River (below Deer Creek Dam);

(xvii) Spanish Fork River;

(xviii) Hobble Creek (Utah County);

(xix) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties);

(xx) Raft River (from the Idaho state line, including all tributaries);

(xxi) Weber River; and

(xxii) Yellow Creek.

(c) Nongame fish, may be taken by underwater spearfishing in the waters and under the conditions specified in Section R657-13-9.

(3) Seines shall not exceed 10 feet in length or width.

(4) Cast nets must not exceed 10 feet in diameter.

(5) Except as provided in Section R657-13-21, lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, dipnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than two lines may have hooks attached. On unhooked lines, bait is tied to the line so that the crayfish grasps the bait with its claw; and

(d) live crayfish are not transported from the body of water where taken.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1)(a) At all waters except Strawberry Reservoir, Scofield Reservoir, Panguitch Lake, Jordanelle Reservoir and Lake Powell, game fish may be dressed, filleted, have heads and/or tails removed, or otherwise be physically altered after completing the act of fishing or reaching a fish cleaning station, camp, or principal means of land transportation. It is unlawful to possess fish while engaged in the act of fishing that have been dressed or filleted. This shall not apply to fish that are processed for immediate consumption or to fish held from a previous day's catch.

(b) Trout and/or salmon taken at Strawberry Reservoir, Scofield Reservoir and Panguitch Lake, and smallmouth bass taken at Jordanelle may not be filleted and the heads or tails may not be removed in the field or in transit.

(c) Fish may be filleted at any time and anglers may possess filleted fish at any time at Lake Powell.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4)(a) A person may not :

(i) take more than one daily limit of game fish in any one day; or;

(ii) possess more than one daily limit of each species or species aggregate, unless the additional fish are:

(A) from a previous days catch;

(B) eviscerated; and

(C) within the possession limit for each species or species aggregate.

(b) Fish kept at the angler's permanent residence do not count towards an angler's possession limit for that species or species aggregate.

(c) A person may possess a full possession limit of Bonneville cisco without eviscerating the fish from a previous days catch.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

R657-13-17. Possession of Live Fish and Crayfish.

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

R657-13-18. Release of Tagged or Marked Fish.

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

R657-13-19. Season Dates and Daily and Possession Limits.

(1) All waters of state fish rearing and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Daily limits and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific daily, possession, or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, daily limit, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's daily limit and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5)(a) A person may not:

(i) take more than one daily limit in any one day; or

(ii) possess more than one daily limit of each species or species aggregate unless the additional fish are:

(A) from a previous days catch;

(B) eviscerated; and

(C) within the possession limit for each species or species aggregate.

(b) A person may possess a full possession limit of Bonneville cisco without eviscerating the fish from a previous days catch.

R657-13-20. Variations to General Provisions.

Variations to season dates, times, daily and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-21. Catch-and-Kill Regulations.

(1) The Wildlife Board may designate in proclamation and guidebook waters where anglers are required to kill specified aquatic animal species that are caught.

(2) A person shall immediately kill any aquatic animal caught in a water identified by the Wildlife Board in proclamation or guidebook as catch-and-kill for that species.

(a) An aquatic animal killed subject to a catch-and-kill regulation may be:

(i) retained and consumed by the angler; or

(ii) disposed of:

(A) in the water where the aquatic animal was caught;

(B) at a fish cleaning station;

(C) at the angler's permanent residence; or

(D) at another location where disposal is authorized by law.

(3) A person may not release a live aquatic animal subject to a catch-and-kill regulation in the water it was caught or in any other water in the state.

KEY: fish, fishing, wildlife, wildlife law

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R657. Natural Resources, Wildlife Resources.
R657-52. Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs.
R657-52-1. Purpose and Authority.

(1) Under authority of Sections 23-14-3, 23-14-18, 23-14-19, Sections 23-15-7 through 23-15-9, and 23-19-1(2), this rule provides the procedures, standards, and requirements for commercially harvesting brine shrimp and brine shrimp eggs.

(2) The objective of this rule is to protect, manage, and conserve the brine shrimp resource based upon the best available data and information and adequately preserve the Great Salt Lake ecosystem while recognizing the economic value of allowing the harvest of brine shrimp and brine shrimp eggs and maintaining a sustainable brine shrimp population.

R657-52-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Alternate seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting brine shrimp and brine shrimp eggs in the absence of the primary seiner.

(b) "Certificate of registration marker" means a floating or mounted marker conforming to the specifications set forth in Subsection R657-52-16(2) and (3), which must be displayed at a harvest location before harvest activity commences.

(c) "Harvest" means to gather or collect brine shrimp or brine shrimp eggs and reduce it to possession.

(d) "Harvest location" means the location where the gathering or harvesting of brine shrimp or brine shrimp eggs takes place. A harvest location is a 300 yard radius from the location of the Certificate of Registration marker as required under Subsection R657-52-16(8).

(e) "Helper" means a person aiding a certificate of registration holder in the harvesting, transporting, or selling of brine shrimp or brine shrimp eggs, including any employee, agent, family member, or volunteer.

(f) "Helper card" means a card authorizing a person to act as a helper.

(g) "Primary seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting brine shrimp and brine shrimp eggs.

(h) "Purchase" means to buy, acquire, or obtain from sale, exchange, barter, or trade brine shrimp or brine shrimp eggs for pecuniary consideration or advantage.

(i) "Wildlife registration office" means the division office in Salt Lake responsible for processing applications and issuing certificates of registration.

R657-52-3. Certificate of Registration Required.

(1) A person may not harvest, possess, or transport brine shrimp or brine shrimp eggs without first obtaining a certificate of registration and a helper card for each individual assisting that person.

(2)(a) The division may issue a certificate of registration authorizing a person to harvest brine shrimp and brine shrimp eggs.

(b) A separate certificate of registration and the corresponding certificate of registration marker is required for each harvest location.

(c) The original copy of the certificate of registration must be present at the harvest location while harvesting brine shrimp or brine shrimp eggs.

(3) A certificate of registration under this rule is not required:

(a) to harvest 200 pounds or less of brine shrimp or brine shrimp eggs, during a single calendar year, for culturing ornamental fish, provided the brine shrimp eggs are not sold, bartered, or traded;

(i) a certificate of registration is required, however, under Rule R657-3 for the activities described in Subsection (a);

(b) for the retail sale of brine shrimp or brine shrimp eggs imported into Utah, provided the product is clearly labeled as to its out-of-state origin;

(c) to process lawfully acquired brine shrimp or brine shrimp eggs;

(d) to sell brine shrimp or brine shrimp eggs, provided the brine shrimp or brine shrimp eggs were taken in accordance with the provisions of this rule by a person who has obtained a certificate of registration or as provided in rule R657-3; or

(e) to collect, transport or possess brine shrimp and brine shrimp eggs for personal use, provided:

(i) the brine shrimp and brine shrimp eggs are collected, transported and possessed together with water in a container no larger than one gallon;

(ii) no more than a one gallon container of brine shrimp and brine shrimp eggs, including water, is collected during any consecutive seven day period; and

(iii) the brine shrimp or brine shrimp eggs are not released live into the Great Salt Lake, Sevier River or any of their tributary waters.

(4) Certificates of registration are not transferable, except as provided in Section R657-52-7.

(5) Any certificate of registration issued to a business or any other commercial organization shall be void upon the termination of the business or organization or upon bankruptcy.

(6) Certificates of registration that may become available for issuance through revocation, expiration, nonrenewal, or surrender may either be retired by the division or reallocated to eligible persons and entities through random drawings conducted at the Division of Wildlife Resources, Salt Lake City office.

(7) All persons or entities applying for a certificate of registration to harvest brine shrimp and brine shrimp eggs made available for issuance through Subsection (6) shall satisfy the following requirements:

(a) submit a certificate of registration application to the wildlife registration office consistent with the requirements set forth in R657-52-5; and

(b) submit a cashiers check to the division in the established fee amount for each certificate of registration applied for.

(8)(a) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(b) Any person accepting a certificate of registration under this rule acknowledges the necessity for close regulation and monitoring by the division.

(9) Any certificate of registration issued or renewed by the division under this rule to harvest brine shrimp or brine shrimp eggs is a privilege and not a right. The certificate of registration authorizes the holder to harvest brine shrimp or brine shrimp eggs subject to all present and future conditions, restrictions, and regulations imposed on such activities by the division, the Wildlife Board, the state of Utah, or the United States.

(10) A certificate of registration to harvest brine shrimp or brine shrimp eggs does not guarantee or otherwise legally entitle the holder to any of the following:

(a) a minimum harvest quota in any given season or seasons;

(b) a quota or percentage of the harvestable surplus as determined by the division;

(c) a particular harvesting or processing method;

(d) a particular harvest season duration, commencement date, or termination date;

(e) access to any particular area or site on the Great Salt Lake or on other waters in the state, regardless of historical

authorization or use;

(f) marina access on the Great Salt Lake or elsewhere in the state, regardless of historical authorization or use;

(g) an increase, stabilization, or reduction in the number of certificates of registration issued by the division to harvest brine shrimp and brine shrimp eggs;

(h) an exclusive opportunity to harvest;

(i) a particular quantity or quality of brine shrimp or brine shrimp eggs;

(j) a particular water condition or salinity level conducive to brine shrimp production, brine shrimp egg production, or harvest success;

(k) any particular level of protection for brine shrimp or brine shrimp eggs from disease, pesticides, or predators; or

(l) any other right or management philosophy beneficial to harvesting or production of brine shrimp and brine shrimp eggs.

(11) The procedures and processes outlined in this rule regulating the harvest of brine shrimp and brine shrimp eggs are all subject to change as the division and the Wildlife Board gather greater information and data on the impact current harvest regulations have on the sustainability of brine shrimp populations, the Great Salt Lake ecosystem, and the economic viability of the industry.

R657-52-4. Certificate of Registration Availability.

(1) The Wildlife Board, after considering the best available biological data and other information received from the division and the public, has determined that:

(a) a limitation on the number of certificates of registration issued by the division to harvest brine shrimp and brine shrimp eggs is currently necessary to protect the brine shrimp resource and the Great Salt Lake ecosystem;

(b) additional research and scientific data is necessary to adequately understand the dynamics of the brine shrimp populations, the Great Salt Lake ecosystem, and the impact harvesting has on the sustainability of the resource;

(c) given the current number of certificates of registration, the need for additional scientific data, and the increasing efficiency in the industry's ability to harvest large quantities of brine shrimp and brine shrimp eggs in short periods, the issuance of additional certificates at this point in time may compromise the division's ability to effectively regulate the harvest to avoid jeopardizing resource sustainability; and

(d) given these factors and the harvest restrictions adopted in this rule, a total of 79 certificates of registration may be issued.

R657-52-5. Application for Certificate of Registration.

(1) Applications for certificates of registration to harvest brine shrimp and brine shrimp eggs are available at division offices and must be submitted to the division between May 1 through May 31. Applications may be submitted by mail if postmarked no later than midnight on the last day of the application period.

(2)(a) If an application for a certificate of registration is made in the name of a commercial organization, the applicant must specify the person responsible for that entity.

(b) All commercial organization applicants shall provide with the application a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(3)(a) Completed applications must be submitted to the wildlife registration office.

(b) The division may return any application that is incomplete or completed incorrectly.

(4) The application review process may require up to 45 days.

(5) The division may deny issuing a certificate of registration to any applicant for any of the following reasons:

(a) the applicant has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(b) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(c) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife.

(6) The division may limit the number of certificates of registration issued or deny any application in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application is approved, the division shall issue the applicant a certificate of registration that specifies, among other things:

(a) the name, address and phone number of the applicant;

(b) the name, address and phone number of the responsible person;

(c) the water and locations where brine shrimp and brine shrimp eggs may be harvested;

(d) the certificate of registration's expiration date; and

(e) any restriction imposed on the applicant in addition to the provisions of this rule.

(8) Certificates of registration for harvesting brine shrimp and brine shrimp eggs are valid only during the harvest season as provided in Sections R657-52-12 and R657-52-13.

R657-52-6. Certificate of Registration Renewal.

(1) Each certificate of registration to harvest brine shrimp and brine shrimp eggs issued under this rule may be renewed by the division on an annual basis consistent with the provisions in this section.

(2) Persons or business entities issued certificates of registration by the division in the harvest year immediately preceding the harvest year for which renewal is sought will have a preference for the same number of certificates of registration, provided the applicant satisfies the renewal criteria for each certificate of registration.

(3) The annual expiration date of a certificate of registration shall be shown on the certificate of registration. A certificate of registration that is not renewed prior to the expiration date shown on the certificate of registration automatically expires.

(a) A certificate of registration automatically expires prior to the expiration date shown on the certificate of registration upon the dissolution of a holder that is a partnership, corporation, or other business entity.

(b) Upon the death of a certificate of registration holder that is a natural person, the estate may attempt to sell the harvest operation and petition the division, under Section R657-52-7, to transfer the certificate of registration to the respective buyer.

(c)(i) Failure to annually renew a certificate of registration by satisfying all the renewal criteria outlined in this rule prior to the expiration date shown on the certificate of registration shall automatically deprive the prospective holder of a renewal preference in succeeding years.

(ii) Preference forfeiture results whether unsuccessful renewal is the consequence of automatic expiration, applicant neglect, or division denial.

(iii) Failure to renew in years where the harvest of brine shrimp or brine shrimp eggs is closed for regulatory or management purposes will result in preference forfeiture.

(d) Expiration of a certificate of registration is not an adjudicative proceeding under Title 63G, Chapter 4 of the Utah Administrative Procedures Act.

(4) Renewal applications for certificates of registration to harvest brine shrimp and brine shrimp eggs are available at the division's wildlife registration office in Salt Lake City.

(a) Completed renewal applications shall be submitted to the wildlife registration office between May 1 and May 31 of each year. Applications are considered "submitted" for purposes of this rule when hand delivered to the wildlife registration office on or before the application deadline, or when mailed to the wildlife registration office and postmarked no later than midnight on the last day of the application period.

(b) Where a certificate of registration renewal application is submitted in the name of a commercial organization, the applicant must specify the person responsible for that entity.

(c) The commercial organization applicant must provide, on or with the renewal application, a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(d) The division may return any application that is incomplete or completed incorrectly.

(e) Applications for renewal that are filed within the prescribed time period set in this rule but returned as incomplete or completed incorrectly may be granted where the errors are corrected and the application resubmitted to the wildlife registration office within 30 days from the date the initial application was rejected.

(f) The application review process may require up to 45 days.

(5) The criteria for certificate of registration renewal are as follows:

(a) the applicant was issued a certificate of registration to harvest brine shrimp and brine shrimp eggs in the immediate harvest season preceding the application for renewal;

(b) the applicant has accurately and completely filled out the division's renewal application and submitted it to the division within the time period prescribed in this rule;

(c) the applicant has submitted with the renewal application a cashiers check for the established fee amount for each certificate of registration; and

(d) the applicant satisfies all other requirements prerequisite to receiving an initial certificate of registration to harvest brine shrimp or brine shrimp eggs as found in R657-52-5.

(6) The division may refuse to renew a certificate of registration for any of the following reasons:

(a) the applicant has failed to submit any report required by the division in writing, or any report required by this rule or the Wildlife Board;

(b) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife;

(c) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(d) where the division determines that renewal may significantly damage or is not in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application for renewal is approved, the Division shall issue the applicant a new certificate of registration that may specify:

(a) the species and amounts of protected aquatic wildlife that may be harvested or sold;

(b) the water and locations where protected aquatic wildlife may be harvested;

(c) the equipment that may be used;

(d) the hours during which protected aquatic wildlife may be harvested; and

(e) any restriction imposed on the applicant in addition to the provisions of this rule.

(8) Any applicant who has been refused renewal of a certificate of registration may submit a request for agency action to the Wildlife Board, in care of the Division of Wildlife Resources, within 30 days following notification of the refusal to renew. The format and content of the request for agency action and any subsequent proceedings initiated thereunder shall comply with Rule R657-2.

(9) Certificates of registration for harvesting brine shrimp and brine shrimp eggs are valid only during the harvest season as provided in Subsections R657-52-12 and R657-52-13.

R657-52-7. Certificate of Registration Transfers.

(1) Pursuant to Section 23-19-1(2), a person may not lend, transfer, sell, give or assign a certificate of registration to harvest brine shrimp and brine shrimp eggs belonging to the person or the rights granted thereby, except as authorized hereafter.

(2) "Business entity" for purposes of this section means any person, proprietorship, partnership, corporation, or other commercial organization that has been issued a certificate of registration by the division to harvest brine shrimp and brine shrimp eggs.

(3)(a) The division may authorize, consistent with the requirements of this section, the transfer of a valid certificate of registration to harvest brine shrimp and brine shrimp eggs from the lawful holder to an other person or entity in the following instances:

(i) where any transaction or occurrence will cause the name of the business entity recorded as the certificate of registration holder to change from that specifically identified on the certificate of registration;

(ii) where any transaction or occurrence will cause the business entity recorded as the certificate of registration holder to permanently reorganize, dissolve, lapse, or otherwise cease to exist as a legal business entity under the laws of the State of Utah or the jurisdiction where the business entity was organized; or

(iii) where any transaction or occurrence effectively transfers a certificate of registration to harvest brine shrimp and brine shrimp eggs in violation of Section 23-19-1(2).

(b) written approval from the division for any certificate of registration transfer permitted under this rule shall be obtained prior to any transfer of the certificate of registration or the rights granted thereunder.

(c) Transferring or selling an ownership interest in a business entity holding a certificate of registration to harvest brine shrimp and brine shrimp eggs does not require division approval provided the transfer of ownership does not cause the business entity to temporarily or permanently change its name, reorganize, dissolve, lapse, or otherwise cease to exist as a legally recognized business entity under the laws of the State of Utah.

(4) Obtaining division approval to transfer a certificate of registration to harvest brine shrimp and brine shrimp eggs shall be initiated by application to the division, as provided in Subsections (a) through (e).

(a) Complete the application prescribed by the division and submit it to the division's wildlife registration office.

(b) Applications may be submitted any time during the year.

(c) Annual applications and fees for certificates of registration renewal shall be submitted between May 1 and May 31, regardless whether a transfer application is contemplated or pending.

(d) If an application to transfer a certificate of registration identifies a business entity as the transferee, the transferee must designate a person responsible for that entity.

(i) The transferee shall provide on or with the application a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(e) The division may return any application that is incomplete or completed incorrectly.

(5) The division shall respond to the application to transfer a certificate of registration within 20 days of receipt in one of the following forms:

(a) a letter approving the application;

(b) a letter denying the application and identifying the reasons for denial;

(c) a letter identifying deficiencies in the application and requesting additional information from the applicant; or

(d) a letter notifying the applicant that the division requires additional time to process and consider the application with an explanation of the extenuating circumstances necessitating the extension.

(6) The division shall deny an application to transfer a certificate of registration where any of the following exists:

(a) the proposed transferee fails to satisfy all the requirements necessary to obtain an original certificate of registration; or

(b) the applicant transferor fails to demonstrate that the certificate of registration will be transferred in connection with the sale or transfer of the entire brine shrimp harvest operation or the harvesting equipment ordinarily required to effectively utilize a certificate of registration.

(i) Business entities holding no harvesting equipment may be approved for a certificate of registration transfer only where the entire business entity and brine shrimp harvest operation is transferred along with all certificates of registration held by the business entity.

(ii) Business entities changing the official name maintained on division records as the certificate of registration holder shall simply establish that the entity's ownership and business structure will not materially differ under the new business name.

(7) The division may deny authorizing a certificate of registration transfer to any proposed transferee for any of the following reasons:

(a) the applicant transferee has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(b) the applicant transferee has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(c) the applicant transferee has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife.

(8)(a) If a transfer application is approved, the division shall accept the surrender of the transferor's certificate of registration and reissue it to the proposed transferee within 10 business days of the surrender consistent with the requirements prescribed in this rule.

(b) The proposed transferee may not begin harvesting brine shrimp or brine shrimp eggs until it has received a certificate of registration from the division issued in its name, and only then in conformance with all applicable laws, rules, and orders of the Wildlife Board and division.

(c) In receiving a certificate of registration transferred under this section, the transferee assumes no additional privileges or opportunities with respect to harvesting brine shrimp and brine shrimp eggs than those formerly possessed by the transferor.

R657-52-8. Primary and Alternate Seiners.

(1)(a) A primary seiner or an alternate seiner must be present at each harvest location and directly supervise the harvest activity.

(b) A primary or alternate seiner does not have to be present while transporting brine shrimp or brine shrimp eggs from the harvest location.

(c) A primary seiner and an alternate seiner card are issued with the certificate of registration and are transferable within the entity holding the certificate of registration.

(d) The primary or alternate seiner must have a primary or alternate seiner card in possession at the harvest location.

R657-52-9. Use of Helpers.

(1)(a) Except as hereafter provided in Subsection (2), any person aiding the certificate of registration holder, a primary seiner, or alternate seiner in harvesting brine shrimp and brine shrimp eggs shall be in possession of a helper card.

(b) Three individual helper cards are issued with the certificate of registration.

(c) A helper card shall be deemed to be in possession if it is on the person or on the boat or at the harvest location from which the person is working.

(2)(a) A helper card is not required of any person engaged only in the retail sale or transportation of brine shrimp or brine shrimp eggs.

(b) A person directing harvest operations from a plane for a certificate of registration holder does not have to have a helper card.

(c) The driver of a truck transporting brine shrimp or brine shrimp eggs from the lake to a storage or processing plant does not have to have a helper card. Any crew member loading brine shrimp and brine shrimp eggs into a truck does not need to have a helper card in possession.

(3) Helper cards are issued in the name of the certificate of registration holder and are transferable among individuals assisting the certificate of registration holder.

(4)(a) A helper may assist in the harvest of brine shrimp and brine shrimp eggs only while working under the direct supervision of a primary or alternate seiner.

(b) For purposes of this rule, "direct supervision" means to be physically present, either on a boat with the helper or within close proximity so as to be able to provide direct instructions to the helper.

(5) Twelve additional helper cards for each certificate of registration may be obtained from the wildlife registration office at any time during the year.

R657-52-10. Records - Report of Activities.

(1) Any person or business entity issued a certificate of registration to harvest brine shrimp and brine shrimp eggs shall keep accurate records of the weight harvested and to whom the product is sold.

(2) The records required under Subsection (1) shall be retained for at least five years and must be available for inspection upon division request.

(3) Certificate of registration holders shall submit the following reports to the Great Salt Lake Ecosystem Project office for each certificate of registration:

(a) A weekly harvest report documenting the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day of the reporting week. The reports must be prepared by a person working for the reporting company, and the reports must be received or postmarked by Monday of each week.

(b) A daily harvest report documenting the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day. The report shall be filed no later than 12 hours after the end of the previous calendar day. The report shall be filed utilizing an electronic communication medium approved by the

Division after consultation with the certificate of registration holders. The report must be prepared or given by a person working for the reporting company.

(i) In the event the approved electronic communication medium malfunctions or is inoperable, daily harvest reports shall be filed no later than six hours after being notified that the system is operational.

(c) A weekly report of all landing receipts prepared pursuant to Section R657-52-14 during the reporting week. The report must be prepared or given by a person working for the reporting company, and must be received by the division or postmarked by Monday of each week.

(4) Report forms may be obtained from the division.

R657-52-11. Species of Protected Aquatic Wildlife That May Be Harvested.

(1) A certificate of registration issued under this rule may authorize the holder to commercially harvest only brine shrimp and brine shrimp eggs.

(2) Any species of protected aquatic wildlife caught other than brine shrimp and brine shrimp eggs must be immediately returned alive and unharmed to the water from which it was harvested.

R657-52-12. Harvest Season and Hours.

(1)(a) Except as provided in Subsections R657-52-13(4) and (5), a certificate of registration is valid for harvesting brine shrimp and brine shrimp eggs only during the harvest season beginning October 1 and ending January 31. If October 1 falls on a Sunday, the harvest season shall begin on the following Monday.

(b) In the interest of the wildlife resources of the Great Salt Lake, the harvest season may be delayed up to 10 days provided the harvesting companies are notified seven days in advance of the delay.

(c) After the season has opened, harvesting may be suspended two times during the season, for up to seven days each time, in the interest of the wildlife resources of the Great Salt Lake, provided the harvesting companies are notified at least 24 hours in advance of the suspension date.

(2) Brine shrimp and brine shrimp eggs may be harvested 24 hours a day during any open harvest season by those possessing a valid certificate of registration for such activities.

(3) When the harvest season is suspended or closed, all harvest activity shall cease at official sunset on the designated date of closure.

R657-52-13. Areas of Harvest and Special Season Dates.

(1) The division may authorize the harvest of brine shrimp and brine shrimp eggs from:

(a) the Great Salt Lake and surrounding areas, including ponds operated in a normal manner for mineral extraction; and

(b) the Sevier River.

(2) The area east of the north-south line from the tip of Promontory Point south along the east shore of Fremont and Antelope Islands and along the dike extending from the south end of Antelope Island to the south shore of the Great Salt Lake is closed to the commercial harvesting of brine shrimp and brine shrimp eggs.

(3) Except as provided in Subsections (4) and (5), brine shrimp and brine shrimp eggs may be harvested only during the harvest season as described in Section R657-52-12.

(4)(a) Any person who has a valid certificate of registration may cumulatively collect up to 25 pounds of brine shrimp eggs between March 1 and the official opening date of the brine shrimp harvest season, as declared by rule or the division, for purposes of conducting research.

(b) For the purpose of conducting research, a person may not collect more than one pound of brine shrimp eggs during a single day regardless of the number of certificates of registration issued to that person.

(c) Brine shrimp and brine shrimp eggs collected for research under the authority of this section may not be sold, traded, or bartered.

(5)(a) Any person possessing a valid certificate of registration to harvest brine shrimp and brine shrimp eggs may do so from mineral extraction ponds located along the shores of the Great Salt Lake any time during the year.

(b) A pond may not be built or manipulated for the purpose of culturing or harvesting brine shrimp or brine shrimp eggs.

(c) Brine shrimp or brine shrimp eggs may not be introduced into the Great Salt Lake or any pond. Brine shrimp and brine shrimp eggs must enter into the pond during normal mineral extraction processes.

(6) All brine shrimp and brine shrimp eggs which have been harvested and placed in containers shall be transported from the lake or lakeshore not later than 21 days after the close of the harvest season. No brine shrimp or brine shrimp eggs may be removed from the surface of the beach or water and placed in a container after the season is closed. Containers filled prior to the close of the harvest season with brine shrimp or brine shrimp eggs may be transported from the lake or lakeshore after the close of the harvest season, provided transportation occurs no later than 21 days following the closure.

R657-52-14. Transportation.

(1) When brine shrimp and brine shrimp eggs are transported away from the lakeshore to a processing plant, a landing receipt form must be prepared and be in possession of the transport driver before leaving the loading site.

(a) The landing receipt shall include:

(i) the harvesters' certificate of registration numbers;

(ii) the certificate of registration holder's name;

(iii) the harvest dates;

(iv) the harvest areas;

(v) the landing dates;

(vi) the container numbers and weights as determined by certified scales for lake harvested brine shrimp and brine shrimp eggs;

(vii) the container numbers and weight estimates for shore harvested brine shrimp and brine shrimp eggs; and

(viii) the names of the individuals who landed and weighed the product.

(2) The driver of a truck transporting brine shrimp product away from the lakeshore is not required to possess a helper card while engaged in that activity.

(3) Any person loading brine shrimp product into a truck to transport from the lakeshore shall possess a helper card.

R657-52-15. Identification of Equipment.

(1)(a) Any boat used for harvesting operations must be identifiable from the air, water and land with either the company name, company initials or certificate of registration number. A camp or base of operations located on or near the shoreline must be marked so it is visible from the air and land with either the company name, company initials, or certificate of registration number. Boat markings denoting the company name, company initials or certificate of registration number, must be visible from a distance of 500 yards when on the lake.

(b) The letters or numbers shall be visible at all times, written clearly and shall meet the following requirements:

(i) letters or numbers on the top of a boat shall be at least 36 inches in height;

(ii) letters or numbers used on the sides of a boat shall be at least 24 inches in height, except that boats with inflatable hulls may use letters and numbers that are 12 inches in height;

(iii) letters or numbers used on a camp or base of operations sign shall be at least 24 inches in height; and

(iv) all letters and numbers used for identification purposes shall be of reflective white tape with a solid black background.

(c) Identification may be done with a magnetic sign placed on top of and the sides of the vehicle or boat.

(d) Each continuous segment of boom that may be coupled together shall be marked to denote the company's name, initials, or certificate of registration number. The markings shall consist of letters or numbers at least three inches in height.

(e) All containers filled or partially filled with brine shrimp or brine shrimp eggs and left unattended on the shore or in a vehicle parked on the shore shall be individually marked with the harvest dates and either the company name, company initials or certificate of registration number under which the product was harvested. Each container shall be marked as follows:

(i) the company name, company initials or the certificate of registration number shall be permanently and legibly marked at a visible location on the exterior surface of the container; and

(A) the harvest dates marked on a durable, waterproof tag securely and visibly attached to the exterior surface of the container; or

(ii) the harvest dates and the company name, company initials or the certificate of registration number shall be permanently and legibly marked on a durable, waterproof tag securely and visibly attached to the exterior surface of the container.

(f) "Shore" for purposes of this section, shall include all lands within one mile of the body of water where the product was harvested. "Shore" does not include permanent structures affixed to the land and operated for purposes of storing or processing brine shrimp and brine shrimp eggs, provided the name of the structure's current owner or tenant is visibly marked on the exterior of the structure.

R657-52-16. Certificate of Registration Markers.

(1)(a) One certificate of registration marker corresponding to each certificate of registration shall be displayed at each harvest location as follows:

(i) on the boat with the certificate of registration on board;

(ii) on the harvest boat or attached to the boom;

(iii) in the water at the harvest location; or

(iv) on the shore while harvesting brine shrimp or brine shrimp eggs from shore.

(b) No more than one certificate of registration marker shall be displayed at each harvest location without permission from the company that first began harvesting at that location.

(c) An original certificate of registration shall be present at the harvest location where the corresponding certificate of registration marker is displayed.

(2) A certificate of registration marker shall consist of a piece of equipment, furnished by the harvesters, constructed in accordance with the following specifications:

(a) A six foot long piece of tubing with a weight at one end.

(b) This piece of tubing shall have a fluorescent orange ball that is a minimum of eighteen inches in diameter, mounted in the approximate center of the length of tubing. The fluorescent orange ball shall have the certificate of registration number, corresponding to the certificate of registration decal attached to the marker pursuant Subsection R657-52-16(2)(c), marked in two places with indelible black paint. The painted certificate of registration numbers shall be a minimum of twelve inches in height.

(c) Mounted above the orange ball towards the un-weighted end of the tubing shall be a decal issued by the division which denotes the certificate of registration in use and corresponding to the certificate of registration marker device.

(d) Mounted on the tubing between the orange ball and the un-weighted end of the tubing, shall be an aluminum radar reflector that is a minimum of fifteen inches square.

(e) Mounted above the radar reflector shall be a three-inch wide band of silver reflective tape.

(f) Mounted on the un-weighted end of this tubing shall be an amber light that at night is visible for up to one-half mile and flashes 30 times per minute, minimum.

(3) The certificate of registration marker must be displayed in a manner that is:

(a) visible in all directions at a distance of 500 yards; or

(b) displayed above the superstructure of any vessel that a certificate of registration is being used from.

(4) The amber light on a displayed marker device must be operating at all times between sunset and sunrise.

(5) A brine shrimp harvester shall not display an amber light at night, or an orange ball or other device which simulates the certificate of registration marker device, without having the corresponding, original certificate of registration at the harvest location.

(6) Brine shrimp or brine shrimp eggs may not be harvested in any manner, nor may a harvest location be claimed unless and until an original copy of the certificate of registration is at the harvest location and the corresponding certificate of registration marker is properly displayed as required in this section.

(7) The certificate of registration and corresponding certificate of registration marker shall not be transported to the harvest location by aircraft.

(a) "Aircraft" for purposes of this section, means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(8) A person may not harvest any brine shrimp or brine shrimp eggs within a 300 yard radius of a certificate of registration marker displayed at a harvest location without permission from the company that first began harvesting in that location.

R657-52-17. Use of Booms.

(1)(a) A primary seiner, alternate seiner, or helper must remain within one mile of any boom attached to the shore, whether open or closed, 24 hours a day so that an officer may easily locate the person tending the boom.

(b) A boom may be left unattended in the open water during the legal harvest season if:

(i) the boom is properly identified as provided in Subsection R657-52-15(1)(d);

(ii) the boom is closed;

(iii) the boom is marked with a certificate of registration marker as described in Subsections R657-52-16(2) and (3); and

(iv) the certificate of registration marker is lighted as described in Subsections R657-52-16(2)(f)and (4).

(2) On a causeway or dike where camping is not allowed, a primary seiner, alternate seiner, or helper must be stationed at the closest possible camping site, not more than 10 miles away, and that location must be clearly identified on a tag securely attached to the shore end of the boom.

(3)(a) A person may not harvest any brine shrimp or brine shrimp eggs within 300 yards of any certificate of registration marker displayed at a harvest location as provided in Subsection R657-52-16(8) without permission from the company that first began harvesting in that location.

(b) Notwithstanding Subsections (1) and (2), a primary seiner, alternate seiner, or helper must be located within 300 yards of the certificate of registration marker deployed as provided in Section R657-52-16 to receive the 300 yard encroachment protection.

(c) The 300 yard encroachment protection radius is enforceable when the COR marker is properly deployed,

regardless of the presence or level of actual harvest activity.

(4) Brine shrimp and brine shrimp eggs may be removed from another person's boom only with written permission from the person who owns the boom.

(5) A person may not deploy more than one continuous length of boom for each certificate of registration.

R657-52-18. Use of Equipment.

(1) A person may not intentionally drive a boat through or create a wake through the 300 yard encroachment protection area of a streak of brine shrimp eggs that another person is harvesting.

(2)(a) A person or business entity possessing a valid certificate of registration may test the equipment to be used in harvesting brine shrimp from March 1 through the official opening date of the brine shrimp harvest season, as declared by rule or the division.

(b) At least 48 hours before testing the equipment, the person must notify the division's Northern Regional Office.

(c) Any brine shrimp or brine shrimp eggs collected while testing the equipment must be immediately returned to the water, if collected from the water, or returned to the beach, if collected from the beach, within 1/4 mile of the location in which they were collected.

(3) Brine shrimp and brine shrimp eggs may not be taken to a storage facility, test site located greater than 1/4 mile from the location in which they were collected, or to shore, except as provided in Section R657-52-13(4).

R657-52-19. Violations.

(1) The penalty for any violation of this rule is a class C misdemeanor as provided in Section 23-13-11(2).

(2) Any violation of, or failure to comply with the provisions of this rule, any requirement contained in a certificate of registration issued pursuant to this rule, any Wildlife Board Order, or any statute related to the harvesting, possession or transfer of brine shrimp or brine shrimp eggs may be grounds for revocation, suspension or denial of future certificates of registration as determined by a division hearing officer.

KEY: brine shrimp, commercialization

November 7, 2013	**23-14-3**
Notice of Continuation September 21, 2017	**23-14-18**
	23-14-19
	23-15-7
	23-15-8
	23-15-9
	23-19-1(2)

R671. Pardons (Board of), Administration.
R671-202. Notification of Hearings.
R671-202-1. Notification.

(1)(a) An offender shall be notified of the date, time, place, and type or purpose of a personal appearance hearing at least seven calendar days in advance of the hearing, except in extraordinary circumstances.

(b) In extraordinary circumstances, the hearing may be conducted without the seven day notification.

(c) An offender may waive this notice requirement.

(2) Public notice of Board hearings shall be posted one week in advance on the Board's website (www.bop.utah.gov).

KEY: parole, inmates
September 20, 2017 **63G-3-201(2)**
Notice of Continuation January 30, 2017 **77-27-7(1)**
77-27-9(4)(a)

R671. Pardons (Board of), Administration.
R671-313. Commutation Hearings (Non-Death Penalty Cases).
R671-313-1. Applicability.

(1) For purposes of this Rule and the decisions, determinations and orders of the Utah Board of Pardons and Parole (Board), acting under its powers as authorized by the Utah Constitution, commutation may mean the change or reduction of the severity of a crime; the change or reduction of an imposed sentence; or the change or reduction of the type or level of offense. Commutation is an act of clemency. Commutation is not a conditional or unconditional pardon.

(2) No person has a right, privilege or entitlement to commutation or clemency.

(3) Petitions for commutation of a death sentence shall be governed by applicable state constitutional provisions, statutes and Utah Administrative Code, Rule R671-312.

(4) All other petitions seeking commutation of a Utah conviction or sentence shall be governed by applicable state constitutional provisions and statutes, and by this administrative rule.

(5) As used in this Rule, "subject" means the person whose conviction(s) or sentence(s) are sought to be commuted by the filing of a commutation petition with the Board.

(6) Any person, individually or through counsel, who has been convicted of any felony, Class A misdemeanor or Class B misdemeanor offense in this State, may petition the Board for commutation of such conviction(s) or sentence(s) entered or imposed in this state, except for cases of treason or impeachment.

(7) The Utah Attorney General; Assistant Attorneys General, as authorized by the Attorney General; any County Attorney or District Attorney; or any Deputy County or District Attorney as authorized by their elected County or District Attorney; may petition the Board, on behalf of any convicted person, for commutation of any such conviction or sentence entered or imposed in this state, except for cases of treason or impeachment.

(8) Any document, pleading, notice, attachment or other item which is submitted as part of the commutation petition, response, or subsequent pleadings shall be delivered to and filed with the Board's Administrative Coordinator, at the Board's offices.

(9) A commutation petition, any response thereto, and any subsequent pleading, submission or document submitted to the Board for consideration in relation to a commutation petition are considered public documents, unless the document is determined by the Board to be controlled, protected or private, pursuant to any other statute, law, rule or prior case law.

(10) Any order issued by the Board relating to a commutation petition is a public document.

R671-313-2. Eligibility.

(1) No commutation petition regarding a traffic citation, an infraction or a Class C misdemeanor will be considered by the Board.

(2) No petition seeking a posthumous commutation of any offense will be considered by the Board.

(3) A petition for commutation may be filed with the Board anytime after the sentencing court has issued a Judgment and Commitment; a Sentence; or a Conviction. The Board may delay it's consideration of any petition where there is or remains pending any appeal or post-conviction litigation regarding the conviction(s) or sentence(s) which are the subject of the commutation petition.

(4) Failure of any petitioner or counsel to comply with this Rule, any other Board rule or any Board directive or order, may result in the summary denial of the petition and cancellation of any scheduled hearing.

R671-313-3. Petition Requirements.

(1)(a) The commutation petition shall be signed under oath. If the petitioner is not the subject of the petition, the subject of the petition shall also sign the petition.

(b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.

(c) If the petitioner is represented by counsel, counsel shall comply in all respects with Utah Administrative Code, Rule R671-103 - Attorneys.

(2) The commutation petition shall include:

(a) the petitioner's name, address, telephone number and e-mail address;

(b) the subject's name, address, telephone number and e-mail address;

(c) the name, address, telephone number and e-mail address of any counsel representing the petitioner in the commutation proceeding;

(d) a certified copy of the Judgment, Conviction and Sentence for which commutation is petitioned;

(e) a statement specifying whether or not the conviction for which commutation is petitioned was appealed; and if so, a copy of any applicable appellate decision;

(f) a statement specifying whether or not the conviction for which commutation is petitioned was the subject of any complaint, petition or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeus corpus or any other extraordinary relief; and if so, a copy of all applicable final orders, rulings, determinations and appellate decisions regarding such litigation.

(g) a copy of all police reports, pre-sentence reports, post-sentence reports and court dockets for the convictions and/or sentence for which commutation is petitioned;

(h) a certified copy of the subject's Utah and NCIC criminal history reports (obtained from the Utah Department of Public Safety);

(i) a statement wherein the subject and petitioner certify that no criminal cases or charges are pending against the subject in any court. If the subject has any pending criminal cases or charges, the statement shall identify and explain all criminal cases or charges pending in any State, Federal or local court and the nature of the cases pending. If such proceedings are pending, the statement must identify the court in which such cases are pending; explain the nature of the proceedings and charges; and note the status of the proceedings.

(j) a statement of the reasons and grounds which petitioner believes support commutation.

(k) copies of all written evidence upon which petitioner intends to rely at the hearing, along with the names of all witnesses whom petitioner intends to call and a summary of their anticipated testimony.

(l) a statement specifying whether any of the stated reasons or grounds for commutation have been reviewed by a court(s); and shall include copy of any court decision entered or made by such a reviewing court;

(m) if the grounds for commutation are based upon post-conviction, newly discovered evidence, the petition shall include a statement explaining why such evidence is considered new, why the purportedly new evidence was not or could not have been reviewed during the judicial, appellate or post-conviction process, and why the purportedly new evidence is not currently subject to judicial review.

(3) If subject is currently on probation or parole, the petition shall include, as an attachment, a report from Adult Probation and Parole which summarizes and explains the subject's progress while under supervision; and which includes a detailed report of progress toward completing all supervision requirements, treatment requirements, alternative events while under supervision, and fulfillment of restitution, fine, fee and other financial obligations.

(4) If the subject is currently incarcerated, the petition shall include, as an attachment, an updated and current Institutional Progress Report from the Department of Corrections, which summarizes and explains the subjects progress while under supervision; and which includes a detailed report of progress toward completing all supervision requirements, treatment requirements, alternative events while under supervision, and fulfillment of restitution, fine, fee and other financial obligations.

(5) If the subject has ever applied for and been denied commutation, the petition shall set forth what, if any, new, significant and previously unavailable information exists which supports commutation and the reasons this information was not previously submitted to the Board, and why this information supports commutation.

(6) At any time following submission of a commutation petition, the Board may seek additional information from the petitioner, the subject or counsel.

R671-313-4. Petition Procedures.

(1)(a) Within six months of receipt of the petition, the Board may either deny the commutation petition without a hearing; request a response from the original prosecuting agency, Attorney General's Office, or the person whose conviction(s) or sentence(s) are sought to be commuted; or grant a commutation hearing in order to further consider the petition. The Board may, on it's own motion, extend the time for preliminary consideration of the petition.

(b) There is no right to a commutation hearing, and the Board retains complete and absolute discretion to determine whether to grant a hearing on the commutation petition.

(2) The Board, after considering the commutation petition, may deny the petition without further pleadings, response, hearing or submissions. If the Board denies a commutation petition without hearing, it shall notify the petitioner and counsel, if represented, and the original prosecuting agency, either by mail or electronic mail.

(3) Upon receipt of a commutation petition, filed by the subject or counsel, the Board may request a response to the petition from the Attorney General, District Attorney, County Attorney or City Attorney whose office or agency originally prosecuted the count(s), charge(s) or case resulting in the conviction and sentence for which commutation is sought; and from any Attorney General, District Attorney, County Attorney or City Attorney whose office represented the prosecuting agency or office in relation to any appeal or post-conviction litigation regarding any conviction or sentence which is the subject of the commutation petition (hereinafter referred to as the "State's response").

(4) If requested prior to the Board scheduling a commutation hearing, the State's response shall be filed with the Board within sixty (60) days of the Board's request, and shall clearly specify whether the responding agency opposes or supports the relief requested in the petition. The State's response shall also include all statements and arguments which form the basis of any opposition to the petition; and shall include all written evidence; the names of all witnesses; and a summary of the anticipated testimony upon which the responding agency intends to rely to challenge or oppose the petition. Following receipt of the State's response, the Board may request either the subject or the State to provide additional information.

(5) The Board, after considering the original commutation petition, and any requested response, may grant a commutation hearing, or may deny the petition without further pleadings, response, hearing or submissions. If after receiving the State's response, the Board denies a commutation petition without hearing, it shall notify the petitioner, counsel, and responding counsel, either by mail or electronic mail.

(6) If the Board grants a commutation hearing:

(a) Within ten calendar days of receiving the Board's order granting a commutation hearing, the subject or his counsel shall serve a copy of the commutation petition and all attachments upon the Attorney General, District Attorney, County Attorney or City Attorney whose office or agency originally prosecuted the count(s), charge(s) or case resulting in the conviction for which commutation is sought.

(b) If any appeal from the conviction was filed, the subject or his counsel shall also serve a copy of the commutation petition and all attachments upon the Attorney General, District Attorney, County Attorney or City Attorney whose office represented the prosecuting agency or office in relation to the appeal.

(c) If any post-conviction litigation was pursued on behalf of the petitioner or which challenged the conviction or sentence for which commutation is petitioned, the subject or his counsel shall also serve a copy of the commutation petition and all attachments upon the Attorney General, District Attorney, County Attorney or City Attorney whose office represented State, county or municipality in relation to the post-conviction litigation.

(d) Proof and verification of all service of pleadings as required herein shall be filed with the Board within seven calendar days of accomplishing such service.

(7)(a) The original prosecuting agency, and any other office which represented the State, a county or a municipality in relation to the conviction, sentence, appeal or post-conviction litigation regarding the conviction or sentence which are the subject of the commutation petition may, within sixty (60) days of receiving a copy of the petition, file a response to the commutation petition with the Board.

(b) The State's response shall be delivered, either by mail, electronic mail or hand delivery to the petitioner and his counsel, if represented. Proof of such service shall be filed with the Board within seven calendar days of accomplishing such service.

(c) The State's response to the petition shall clearly specify if the responding agency opposes or supports the relief requested in the commutation petition. The response shall also include all statements and arguments which form the basis of any opposition to the commutation petition; and shall include all written evidence; the names of all witnesses; and a summary of the anticipated testimony upon which the responding agency intends to rely to challenge or oppose the petition. Following receipt of the State's response, the Board may request either the petitioner or the State to provide additional information.

(8) If the Board grants a commutation hearing, the Board Chair or designee will schedule and hold a pre-hearing conference at which time the Board, after hearing from the parties, will schedule the commutation hearing; identify and set the witnesses to be called; clarify the issues to be addressed; and take any other action deemed necessary and appropriate to conduct the commutation proceedings.

R671-313-5. Commutation Hearing.

(1) Pursuant to Utah Constitution, Art. VII, Section 12, and Utah Code Ann., Section 77-27-5, a commutation hearing must be held before the full Board.

(2) Notice of the commutation hearing shall be sent to the victim of, and the police agency which investigated the offenses for which commutation has been petitioned, pursuant to applicable statutes, rules or practices of the Board. Public notice of the commutation hearing will also be made via the Board's internet website, and the State of Utah Public Meeting and Notice website.

(3) If not otherwise called as a witness, a victim representative, as defined by Utah Administrative Code, Rule R671-203-1, shall be afforded the opportunity to attend the

commutation hearing, and to present testimony regarding the commutation petition, in accordance with, and subject to the provisions of Administrative Rule R671-203-4(A-C, and F).

(4) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, the subject of the petition and the subject's counsel. The Utah Rules of Evidence do not apply to a commutation hearing.

(5) In conducting the commutation hearing:

(a) The Board will place all witnesses under oath and may impose a time limit on each party for presenting its case.

(b) The Board will record the commutation hearing in accordance with Utah Code Ann. Subsection 77-27-8(2).

(c) Administrative Rule R671-302 "News Media and Public Access to Hearings" will govern media and public access to the hearing.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

R671-313-6. Commutation Decision.

(1) The Board shall determine by majority decision whether and under what conditions, if any, to grant the petition, in whole or in part, and to commute a conviction or sentence.

(2) The decision of the Board regarding the grant or denial of commutation following a hearing shall be delivered by mail or electronic mail to the parties, and published by the Board in the same manner as other Board decisions.

(3) The decision of the Board will also be filed with the court which entered the sentence or conviction which are the basis of the commutation petition.

(4) If a sentence or conviction is commuted, the Board will also cause a copy of the commutation order to be delivered to the Utah Department of Public Safety -- Bureau of Criminal Information and the Federal Bureau of Investigation.

KEY: commutation, pardons, punishment
October 4, 2012 Art. VII, Sec. 12
Notice of Continuation September 28, 2017 63G-3-201(3)
77-27-1 et seq.
77-27-5; 77-27-9

R765. Regents (Board of), Administration.
R765-134. Informal Adjudicative Procedures Under the Utah Administrative Procedures Act.
R765-134-1. Purpose.

To provide guidelines and procedures for the application of the Administrative Procedures Act Title 63G, Chapter 4, and associated regulations, to the public institutions of higher education, the State Board of Regents, and the Utah Higher Education Assistance Authority.

R765-134-2. References.

2.1. Section 53B-1-103

2.2. Section 63G-4-102 et seq.

R765-134-3. Definitions.

3.1. "Adjudicative proceeding" means an institutional action or proceeding described in Section 63G-4-102, Utah Code Annotated (1953).

3.2. "Institution" means the State Board of Regents, the Utah Higher Education Assistance Authority, the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie College, the College of Eastern Utah, Utah Valley State College, Salt Lake Community College, and other public post-high school educational institutions as the Legislature may designate to be included in the State System of Higher Education.

3.3. "Party" means the institution or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or institutional rule to participate as parties in an adjudicative proceeding.

3.4. "Person" means an individual, group of individuals, partnership, corporation, association, institution, agency, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character.

3.5. "Presiding officer" means the chief executive officer of the institution, or an individual or body of individuals designated by the chief executive officer, by institutional rules, or by statute to conduct an adjudicative hearing.

3.6. "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an institution or any other person.

R765-134-4. Policy.

4.1. The Utah Administrative Procedures Act, Section 63G-4-102, provides certain exemptions from the Act which affect higher education institutions.

As a consequence of the foregoing statutory provisions adjudicative proceedings relating to the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty, to personnel matters for all employees, to contracts for the purchase and sale of goods and services by the institutions, or to actions required by federal statute or regulation to be conducted solely according to federal procedures are not governed by the Utah Administrative Procedures Act.

4.2. Campus traffic and parking - Section 53B-3-106(2), provides that "State institutions of higher education are 'political subdivisions' . . . as these terms are used in Chapter 6, Title 41." relating to Traffic Rules and Regulations. The Utah Administrative Procedures Act applies to "agencies" which as defined in 63G-4-103(1)(b) does not include "any political subdivision of the state, or any administrative unit of a political subdivision of the state." Consequently, the institutions are exempt from the Act in matters involving campus traffic regulations not only where students and employees are involved but also where they impact persons other than students and employees. However, since some aspects of parking and parking lot management may not be covered by Chapter 6, Title 41, hearings relating to parking matters which involve persons other than students and employees may be subject to the Act.

4.3. Informal adjudicative proceedings for certain admissions, residence for tuition purposes, financial aid (including the eligibility for and collection of student loans), campus parking, campus event participation, former student matters, former employee matters, and other matters not exempted from the Administrative Procedures Act - Adjudicative proceedings, undertaken by an institution, which affect matters other than (a) the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty, (b) personnel matters for all employees, (c) campus traffic, (d) contracts for the purchase and sale of goods and services by the institution, or (e) actions required by federal statute or regulation to be conducted solely according to federal procedures, are to be conducted informally according to the procedures set forth in these rules, enacted under the authority of the Utah Administrative Procedures Act. Adjudicative proceedings where parties other than students or employees are involved hereby authorized to be handled informally include, but are not limited to, admissions, residence for tuition purposes, financial aid (including the eligibility for and collection of student loans), campus parking, campus event participation, former student matters, and former employee matters.

4.4. Board findings as to appropriateness of informal adjudicative proceedings - The use of informal procedures as provided in paragraph 4.3 does not violate any procedural requirement imposed by a statute other than Chapter 4, Title 63G; the rights of the parties to the proceedings will be reasonably protected by the informal procedures; the institutions' administrative efficiency will be enhanced by this categorization; and the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.

4.5. Substitution of presiding officer - If fairness is not compromised, an institution may substitute one presiding officer for another during any proceeding. A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

4.6. Institutional variances with this rule - Each institution is authorized to adopt its own categorizations and procedures duly enacted under the authority of Chapter 4, Title 63G. Significant variations from the Board's rules and procedures must be approved by the Board.

R765-134-5. Procedures for Informal Adjudicative Proceedings.

5.1. Commencement - An informal adjudicative proceeding shall be commenced by either (a) a notice of institutional action, if proceedings are commenced by the institution; or (b) a request for institutional action, if proceedings are commenced by persons other than the institution.

5.2. Notice - A notice of institutional action or a request for institutional action shall be filed and served according to the following requirements: The notice shall be in writing, signed by a presiding officer if the proceeding is commenced by the institution, or by the person invoking the jurisdiction of the institution, or by his representative, and shall include:

5.2.1. the names and mailing addresses of all respondents and other persons to whom notice is being given;

5.2.2. the institution's file number or other reference number;

5.2.3. the name of the adjudicative proceeding;

5.2.4. the date that the notice of institutional action or the request for institutional action was mailed;

5.2.5. if a hearing is to be held, a statement of the time and place of any scheduled hearing, a statement of the purpose for

which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

5.2.6. if a hearing is not scheduled, a statement that a party may request a hearing within 20 days of the mailing of the notice or such other time as prescribed by institutional rule;

5.2.7. a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained or institutional action is requested;

5.2.8. a statement of the purpose of the adjudicative proceeding, the questions to be decided (to the extent known) or the facts and reasons forming the basis for relief, and the relief or decision sought by the commencing party; and

5.2.9. the name, title, mailing address, and telephone number of the presiding officer.

5.2.10. The institution shall mail the notice of institutional action or the request for institutional action to each party.

5.3. Answer not required - No answer or other pleading responsive to the allegations contained in the notice of institutional action or the request for institutional action need be filed.

5.4. Hearings - The institution shall hold a hearing only if a hearing is required by statute or rule, or if a hearing is permitted by statute and a hearing is requested by a party within 20 days of the mailing of the notice, or such other time as prescribed by institutional rule. "Hearing" includes not only a face-to-face proceeding but also a proceeding conducted by telephone, television or other electronic means.

5.5. Rights of parties to testify, present evidence, and comment on the issues - In any hearing, the parties named in the notice of institutional action or in the request for institutional action shall be permitted to testify, present evidence, and comment on the issues. Participation is normally limited to the named parties.

5.6. Timely notice - Hearings will be held only after timely notice to all parties.

5.7. No discovery or subpoenas - Discovery is prohibited, and the institution may not issue subpoenas or other discovery orders. This prohibition against discovery is not intended to discourage the non-coercive gathering or sharing of information by the parties.

5.8. Access to institution's files - All parties shall have access to information contained in the institution's files and to all materials and information gathered in any investigation, to the extent permitted by law.

5.9. Intervention prohibited - Intervention is prohibited, except that the institution may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.

5.10. Hearings open to parties - All hearings shall be open to all parties. If the hearing is conducted by telephone, television or other electronic means this criterion is met if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see that aspect of the entire proceeding which is significant to the viewer while the proceeding is taking place.

5.11. Order of the presiding officer - Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within the time prescribed by the institution's or this rule, the presiding officer shall issue a signed order in writing that states the following:

5.11.1. the decision;

5.11.2. the reasons for the decision;

5.11.3. a notice of any right of administrative or judicial review available to the parties; and

5.11.4. the time limits for filing an appeal or request for review.

5.12. Basis of order - The presiding officer's order shall be based on the facts appearing in the institution's files and on the facts presented in evidence at any hearings.

5.13. Hearings recorded - All hearings shall be recorded at the institution's expense. Any party, at his own expense, may have a reporter approved by the institution prepare a transcript from the institution's record of the hearing.

5.14. Institution's investigative rights - Nothing in this rule restricts or precludes any investigative right or power given to an institution by a statute other than Chapter 4, Title 63G.

5.15. Default - The presiding officer may enter an order of default against a party if that party fails to participate in the adjudicative proceeding. The order shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the institution set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure. After issuing the order of default, the presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

5.16. Institutional review - If a statute or the institution's rules permit parties to any adjudicative proceeding to seek review of an order, the aggrieved party may file a written request for review within ten days after the issuance of the order with the person or entity designated for that purpose by statute or rule. The form and procedures for such a request are set forth in 63G-4-301, Utah Code Annotated (1953).

5.17. Institutional reconsideration - Within ten days after the date that an order on review is issued, or within ten days after the date that a final order is issued for which institutional review is unavailable, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order or the order on review. The request for reconsideration shall be filed with the institution and one copy shall be sent by mail to each party by the person making the request. The institution president, or a person designated for that purpose, shall issue a written order granting the request or denying the request. If the president or his designee does not issue an order within 20 days after the filing of the request, the request for rehearing shall be considered to be denied.

5.18. Exhaustion of administrative remedies - A party aggrieved may obtain judicial review of final institutional action except in actions where judicial review is expressly prohibited by statue, only after exhausting all administrative remedies available, except that:

5.18.1. a party seeking judicial review need not exhaust administrative remedies if a statute states that exhaustion is not required;

5.18.2. the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if the administrative remedies are inadequate, or exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

5.19. Filing for judicial review - A party shall file a petition for judicial review of final institutional action within 30 days after the date that the order constituting the final institutional action is issued. The petition shall name the institution and all other appropriate parties as respondents and shall meet the form requirements specified in Chapter 4, Title 63G.

5.20. Judicial review - The district courts shall have jurisdiction to review by trial de novo all final institutional action resulting from an adjudicative proceeding hereunder, except that final institutional action from proceedings based on a record shall be reviewed by the district courts on the record according to the standards of 63G-4-403(4). The form of the

petition and procedures for this process are set forth in 63G-4-402, Utah Code Annotated (1953).

5.21. Stay and other temporary remedies pending final disposition on judicial review - Unless precluded by statute, the institution may grant a stay of its order, or other temporary remedy during the pendency of judicial review, according to the institution's rules. If the institution denies a stay or denies other temporary remedies requested by a party, the institution's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

5.22. Emergency adjudicative proceedings - An institution may issue an order on an emergency basis without complying with the requirements of Chapter 4, Title 63G if the facts known by the institution or presented to the institution show that an immediate and significant danger to the public health, safety, or welfare exists, and the threat requires immediate action by the institution. In issuing its emergency order, the institution shall:

5.22.1. limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

5.22.2. issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the institutions utilization of emergency adjudicative proceedings; and

5.22.3. give immediate notice to the persons who are required to comply with the order. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the institution shall commence appropriate adjudicative proceedings in accordance with the other provisions of these rules and Chapter 4, Title 63G.

5.23. Declaratory orders - Any person may file a request for institutional action, requesting that the institution issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the institution to specified circumstances. An institution may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding. After receipt of a petition for a declaratory order, the institution may issue a written order: (a) declaring the applicability of the statute rule, or order in question to the specified circumstances; (b) setting the matter for adjudicative proceedings; (c) agreeing to issue a declaratory order within a specified time; or (d) declining to issue a declaratory order and stating the reasons for its action. The declaratory order shall contain: (a) the names of all parties to the proceeding on which it is based; (b) the particular facts on which it is based; and (c) the reasons for its conclusions.

KEY: colleges, higher education, adjudicative procedures
July 2, 1997 63G-4
Notice of Continuation September 29, 2017

R765. Regents (Board of), Administration.
R765-993. Records Access and Management.
R765-993-1. Purpose.

To provide policy related to State Board of Regents and Office of the Commissioner records access and management matters pursuant to the Government Records Access and Management Act (GRAMA), Title 63G, Chapter 2, Utah Code Annotated 1953.

R765-993-2. References.

2.1. 63G-2-204(2)
2.2. 63A-12-104(2)
2.4. 53B-16-301 through 305
2.5. The Family Educational Rights and Privacy Act of 1974 (Buckley Amendment), 20 U.S.C. Section 1232g
2.6. Policy and Procedures R132, Government Records Access and Management Act Guidelines

R765-993-3. Definitions.

3.1. Classification - "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under GRAMA Section 201(3)(b).

3.2. Designation - "Designation," "designate," and their derivative forms mean indicating, based on the Records Officer's familiarity with a record series, the primary classification that a majority of records in a record series would be given if classified.

3.3. Exempt records - "Exempt records" are records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, such as, for higher education institutions, Restricted Sponsored Research/Technology Transfer Records (53B-16-301 through 305); and The Family Educational Rights and Privacy Act of 1974 (Buckley Amendment), 20 U.S.C. Section 1232g.

R765-993-4. Policy Guidelines.

4.1. Records sub units in the Office of the Commissioner - There shall be two records sub units within the Office of the Commissioner: the general State Board of Regents and Office of the Commissioner records sub unit and the student financial aid records sub unit.

4.2. Records Officers - The Commissioner shall appoint a Records Officer for each sub unit to provide for the care, maintenance, scheduling, disposal, classification, designation, access, and preservation of the records of the sub unit.

4.3. Written requests for access to records - All written requests for access to records shall be directed as follows, and shall be made in a format as specified by the cognizant Records Officer:

4.3.1. General Board of Regents and Office of the Commissioner - Requests for records of general Board of Regents and Office of the Commissioner functions shall be directed to the Records Officer of the State Board of Regents and Office of the Commissioner sub unit.

4.3.2. Student Financial Aid - Requests for records of student financial aid functions shall be directed to the Records Officer of the Student Financial Aid sub unit.

4.4. Officers responsible to undertake the various requirements of GRAMA - The various requirements of GRAMA shall be undertaken, as follows:

4.4.1. Designation of records - The Records Officer shall designate each record or record series retained by the sub unit as either public, private, controlled, protected, restricted under 53B-16-302, or otherwise exempt from disclosure under GRAMA 201(3)(b). The Records Officer shall report the designations to state archives. (See GRAMA Section 306.)

4.4.2. Statement of purpose for collecting information - When the Records Officer designates a record as private or controlled, the Records Officer must also file a statement with state archives explaining the purposes for which the records are collected and used. (See GRAMA Section 601.) The Office may use the record only for the purposes listed in that statement. However, sharing of records with other governmental entities is allowed, subject to the restrictions of GRAMA Section 206.

4.4.3. Weighing of privacy and access interests - The Commissioner may weigh privacy interests against access interests and allow access to specific private or protected records if the interests favoring access outweigh the interests favoring restriction of access. (See GRAMA Section 201(5)(b).)

4.4.4. Appeals to the Commissioner - Appeals regarding questions of access to records shall be directed to the Commissioner. (See GRAMA Section 401.)

4.4.5. Fees - If duplication, or compilation of records in a form other than that maintained, is necessary, the cognizant Records Officer may charge a fee to the requestor of the records to cover the actual cost of duplicating or compiling the records. (See GRAMA Section 203(3).)

4.4.6. Access for research purposes - The cognizant Records Officer may make determinations regarding requests for access to records for research purposes, as provided by GRAMA Section 202(3).

4.4.7. Intellectual property rights - The Commissioner shall make determinations regarding the duplication and distribution of materials held by either sub unit and for which the State Board of Regents or Office of the Commissioner owns the intellectual property rights, as permitted by GRAMA Section 201(10).

4.4.8. Sponsored research and technology transfer - The Commissioner may restrict access to portions of technology transfer and sponsored research records for the purpose of securing and maintaining proprietary protection of intellectual property rights, or for competitive or proprietary purposes as a condition of actual or potential participation in a sponsored research or technology transfer agreement, as provided by sections 53B-16-301 through 305.

4.4.9. Written claim of business confidentiality - A Records Officer may accept a written claim of business confidentiality in a form specified by the Records Officer and subject to the Records Officer's review of the claim for reasonableness. (See GRAMA 304(2) and 308.)

4.4.10. Segregation - A Records Officer may choose to segregate records or information within records that a future requester will be entitled to inspect, from records or information within records that the requester will not be entitled to inspect, in order to simplify the segregation process at the time the request for access is made. (See GRAMA Section 307.)

4.5. Appeals of the accuracy or completeness of personal records - An individual may contest the accuracy or completeness of records concerning him or her. Appeals from such decisions are governed by the Utah Administrative Procedures Act (UAPA). Appeals from such decisions shall be conducted informally rather than formally pursuant to R134, Informal Adjudicative Proceedings Under the Utah Administrative Procedures Act. (See GRAMA Section 603.)

4.6. Anonymity of donors and prospective donors - A donor or prospective donor may request anonymity in writing. The written request shall be submitted to a Records Officer and shall be accompanied by a written statement which does not reveal the identity of the donor or prospective donor but which contains any terms, conditions, restrictions, or privileges relating to the donation, which information may not be classified protected by the Office of the Commissioner under GRAMA Section 304(36).

KEY: colleges, higher education, records access, records

management	
July 2, 1997	**63G-2**
Notice of Continuation September 29, 2017	**53B-7**
	53B-16

R914. Transportation, Operations, Aeronautics.
R914-1. Rules and Regulations.
R914-1-1. Purpose and Authority.

The purpose of this rule is to regulate the use, licensing and supervision of airports, govern the establishment, location and use of air navigational aids, and establish minimum standards for operational safety as authorized and required by Section 72-10-103.

R914-1-2. Definitions.

As used in this rule:

(1) "Department" means the Utah Department of Transportation;

(2) "FAA" means the Federal Aviation Administration; and

(3) Division means the Aeronautical Operations Division.

R914-1-3. Establishment and Location of Navigational Aids.

Procedure.

(1) Location site is selected.

(2) Site is surveyed for location and elevation.

(3) Selected site is submitted to the FAA for approval.

(4) Upon receiving FAA approval, navigational aid may be installed.

(5) After installation, navigational aid is checked and certified for operation by the FAA.

R914-1-4. Operational Safety.

In order to enhance the safety of aircraft operations and protect people and property, the Department imposes the following operational safety rules.

(1) All pilots operating aircraft in the State of Utah will comply with applicable Federal Aviation Regulations.

(2) Obstruction to flight. Any obstacle or structure which obstructs the airspace above the ground or water level which is determined to be a hazard to the safe flight of aircraft shall be plainly marked, lighted or removed.

(3) Determination of obstruction. When an obstacle or structure is determined to be a hazard to flight, the owner will be notified and will have ten days after receipt of the notice to take action to correct the hazard or appeal the determination to the Department.

KEY: air traffic, aviation safety, airports, airspace
October 12, 2016 72-10-103
Notice of Continuation September 5, 2017 72-10-116

R914. Transportation, Operations, Aeronautics.
R914-2. Safety Rules and Procedures for Aircraft Operations on Roads.
R914-2-1. Purpose and Authority.

The purpose of this rule is to establish procedures for aircraft operations on county roads as authorized and required by Section 72-10-117.

R914-2-2. Procedures.

(1) Only lightly traveled roads will be used for aircraft operations. Counties will designate particular county road segments to be used.

(2) The road to be used for aircraft operations will be inspected by ground personnel for safety prior to use.

(3) The road segment to be used will be blocked off by ground personnel prior to aircraft operations to insure that there is no road traffic during the aircraft use period.

(4) Landings will be permitted on roads during daylight hours only.

R914-2-3. Issuance of Special Licenses to Pilots Operating on Roads.

(1) Applicant must be a holder of at least a private pilot certificate.

(2) Applicant must have a minimum of 200 total flying hours and at least 25 hours in the type of aircraft to be used.

(3) Applicant must have completed a proficiency review flight within the past 24 months.

(4) Applicant must be familiar with short and soft field landing and take-off procedures and obstacle clearance procedures for the type aircraft used.

R914-2-4. Issuance of Special Licenses for Aircraft Landing on Roads.

(1) Licenses will be issued only to those showing specific need to use roads for aircraft operations in order to accomplish a required service.

(2) The applicant will be required to show proof of insurance pursuant to Section 72-10-117. Insurance must have no stipulations against off-airport operations.

KEY: licensing, aviation safety
1990 72-10-117
Notice of Continuation September 5, 2017

R930. Transportation, Preconstruction.
R930-7. Utility Accommodation.
R930-7-1. Purpose.

(1) The purpose of this rule is to:

(a) maximize public safety;

(b) provide for efficient highway operations and maintenance of roadways:

(c) maximize aesthetic quality;

(d) minimize future conflicts between the highway system and utility companies serving the general public; and

(e) ensure that use and occupancy by utility companies do not impair or increase the cost of future highway construction, expansion, or maintenance or interfere with any right of way reserved for these purposes.

(2) This rule prescribes conditions under which utility facilities may be accommodated on right of way and sets forth the state's regulations covering the placement and relocation of utility facilities in conflict with the construction and maintenance of highways. General installation requirements, general and definitive design requirements, and utility construction and inspection requirements apply to indirect and private facilities within the right of way. Within UDOT's sole discretion, indirect and private facilities may be allowed on UDOT's right-of-way by lease.

(3) This rule should be interpreted to achieve maximum lawful public use of right of way for transportation purposes and to ensure that utility installations and operations affecting state right of way are accomplished in accordance with state and federal laws and regulations. It is in the public interest for utility facilities to be accommodated within rights of way when the accommodation does not adversely affect the integrity of highway features or occupy space within the right-of-way that conflicts with transportation purposes or future use of the highway. The permitted use and occupancy of right of way for non-highway purposes is subordinate to the primary and highest interest for transportation and safety of the traveling public. Utility facilities may be required to relocate outside of the right of way to accommodate UDOT's projects.

(4) This rule is provided to facilitate the establishment of consistent expectations and effective working relationships between UDOT and utility companies through continuous communication, coordination and, cooperation.

(5) Through the Code of Federal Regulations (23 CFR, Part 645.215(a)), the U.S. Department of Transportation requires each state to submit a statement to the Federal Highway Administration (FHWA) on the authority of utility companies to use and occupy the right of way of state highways, the state highway agency's power to regulate the use, and the policies the state employs or proposes to employ for accommodating utilities within the right of way of Federal-aid highways under its jurisdiction. This rule demonstrates compliance to FHWA.

R930-7-2. Authority and Source Documents.

This rule is enacted under the authority of Section 72-6-116(2), wherein UDOT is authorized and given the responsibility to regulate and make rules for the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of utility facilities within state administered highways, including ordering their relocation as may become necessary.

(1) Utah Code provides for the accommodation of utility facilities within the right of way and provides UDOT the authority to promulgate rules and regulations for administering those provisions. Accordingly, this rule has been developed pursuant to the following state and federal laws, codes, regulations, policies:

(a) Utah Code, Title 54, Public Utilities, Section 54-3-29;

(b) American Association of State Highway and Transportation Officials (AASHTO) publications, A Guide for Accommodating Utilities within Highway Right of Way and A Policy on the Accommodation of Utilities within Freeway Right of Way; and

(c) AASHTO publications, Roadside Design Guide and A Policy on Geometric -Design of Highways and Streets.

(2) This rule incorporates by reference 23 CFR Section 645, Subpart B, (November 22, 2000).

(3) UDOT has secured the authority from FHWA to issue permits for the use or occupancy of the right of way by utility facilities on Federal-aid highways. The use of Federal-aid highway right of way by utilities shall be in accordance with 23 CFR 645.215.

R930-7-3. Definitions.

(1) "Abandoned facility" is a utility facility that is not in use, no longer actively providing a service and is physically disconnected from the operating facility that is still in use and still actively providing a service. Abandoned facilities remain the property of the utility company.

(2) "Access control" is the regulation of public access to and from properties abutting the highway facilities. The two basic types of access control are:

(a) "No access (NA)" means access to through-traffic lanes is not allowed except at interchanges. Crossings at grade and direct driveway connections are prohibited.

(b) "Limited access (LA)" means access to selected public roads may be provided. There may be some crossings at grade and some private driveway connections.

(3) "Administrative citation" is a letter from UDOT to a utility company citing one or more non-compliance items and proper redress requirements such as action on the appropriate bond, revocation of permit, and revocation of a license agreement.

(4) "AASHTO" is the American Association of State Highway and Transportation Officials.

(5) "Backfill" means the replacement of soil removed during construction. It may also denote material placed over or around structures and utilities.

(6) "Bedding" means the composition and shaping of soil or other suitable material to support a pipe, conduit, casing, or utility tunnel.

(7) "Boring" means the operation by which carriers or casings are pushed or jacked under highways without disturbing the highway structure or prism. Bores are carved progressively ahead of the leading edge of the advancing pipe as soil is mucked back through the pipe.

(8) "Carrier" means a pipe directly enclosing a transmitted fluid (liquid, gas, or slurry).

(9) "Casing" is a larger pipe, conduit, or duct enclosing a carrier.

(10) "Clear Zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and a clear run-out area. The desired width is dependent upon traffic volumes, speeds, and roadside geometry.

(11) "Coating" is material applied to or wrapped around a pipe.

(12) "Conduit" is an enclosed tubular casing for the protection of wires and cables.

(13) "Depth of bury (cover)" means the depth from ground or roadway surface to top of pipe, conduit, casing, cable, utility tunnel, or similar facility.

(14) "Deviation" means a granted permission to depart from the standards and requirements of this rule.

(15) "Emergency work" is utility company work required to prevent loss of life or significant damage to property.

(16) "Encasement" is a structural element surrounding a carrier or casing.

(17) "Encroachment" means the unauthorized use of highway right of way.

(18) "Encroachment permit" is a document that specifies the requirements and conditions for performing work on the highway right of way.

(19) "Environmentally protected areas" are areas that include, but are not limited to, wetlands, flood plains, stream channels, rivers, threatened or endangered species, archaeological sites, and historic sites.

(20) "Expressway" is a divided arterial highway for through traffic with partial control of access and generally with grade separations at major intersections.

(21) "Federal-aid highways" are highways eligible to receive Federal-aid.

(22) "FHWA" is the Federal Highway Administration.

(23) "Flexible carrier pipe" is a plastic, fiberglass, or metallic pipe having a large diameter to wall thickness ratio and which can be deformed without undue stress.

(24) "Flowable fill" is low strength flowable concrete as defined in UDOT Standard Specification 03575.

(25) "Freeway" is an expressway with full control of access.

(26) "Frontage road" is a local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

(27) "Grade" is the rate or percent of change in slope, either ascending or descending, measured along the centerline of a roadway or access.

(28) "Grounded" means electrically connected to earth or to some extended conducting body that serves instead of the earth, whether the connection is intentional or accidental.

(29) "Grout" is a cement mortar or slurry of fine sand or clay.

(30) "Highway, street, or road" are general terms denoting a public way for the transportation of people, materials, and goods, but primarily for vehicular travel, including the entire area within the right of way.

(31) "Horizontal directional drilling" (HDD), also known as directional boring and directional drilling, is a method of installing underground pipes and conduits from the surface along a prescribed bore path. The process is used for installing telecommunications and power cable conduits, water lines, sewer lines, gas lines, oil lines, product pipelines, and casings used for environmental remediation. It is used for crossing waterways, roadways, congested areas, environmentally protected areas, and any area where other methods are not feasible.

(32) "Indirect facilities" are facilities owned by a utility company or entity that does not directly serve the public and the facilities provide services to or are rented to other utility companies.

(33) "Interstate highway system" (Interstate) is the Dwight D. Eisenhower National System of Interstate and Defense Highways as defined in the Federal-aid Highway Act of 1956 and any supplemental acts or amendments.

(34) "License Agreement or Statewide Utility License Agreement" is a document by which UDOT licenses the use and occupancy, with conditions, of highway rights of way for utility facilities.

(35) "Manhole" or "utility access hole" is an opening in an underground system that workers or others may enter for the purpose of making installations, removals, inspections, repairs, connections, and tests.

(36) "Median" is the portion of a divided highway separating the traveled ways for traffic in opposite directions.

(37) "MUTCD (Utah MUTCD)" means the current version of Utah Manual on Uniform Traffic Control Devices referenced in R920-1.

(38) "Pavement structure" is the combination of sub-base, base course, and surface course placed on a sub-grade to support the traffic load.

(39) "Permit" means encroachment permit.

(40) "Pipe" is a tubular product made as a production item for the transmission of liquid or gaseous substances. Cylinders formed from plate material in the fabrication of auxiliary equipment are not pipe as defined here.

(41) "Pipeline" is a continuous carrier used primarily for the transportation of liquids, gases, or solids from one point to another using either gravity or pressure flow.

(42) "Plowing" means the direct burial of utility lines by means of a mechanism that breaks the ground, places the utility line, and closes the break in the ground in a single operation.

(43) "Practicable" means reasonably capable of being accomplished or feasible as determined by UDOT.

(44) "Relocate" means the adjustment of utility facilities when found by UDOT to be necessary for construction or maintenance of a highway. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring the necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

(45) "Right of way" is a general term denoting land, property, or interest therein, usually in a strip acquired for or devoted to transportation purposes.

(46) "Roadside" is a general term denoting the area between the outer edge of the roadway shoulder and the right of way limits.

(47) "Roadway" is the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

(48) "Slope" is the relative steepness of the terrain expressed as a ratio or percentage. Slopes may be categorized as positive or negative and as parallel or cross slopes in relation to the direction of traffic.

(49) "State highways" are those highways designated as State Highways in Title 72, Chapter 4, Designation of State Highways.

(50) "Structure" means any device used to convey vehicles, pedestrians, animals, waterways or other materials over highways, streams, canyons, or other obstacles. It also includes buildings, signs, and UDOT facilities with foundations.

(51) "Subsurface Utility Engineering (SUE)" is the management of certain risks associated with utility mapping at appropriate quality levels, utility coordination, utility relocation, communication of utility data, utility relocation cost estimates, implementation of utility accommodation policies, and utility design. SUE tools include traditional records, site surveys, and new technologies such as surface geophysical methods and non-destructive vacuum excavation, to provide quality levels of information. The SUE process for collecting and depicting information on existing subsurface Utility Facilities is described in ASCE Standard 38-02, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data.

(52) "Trenched" means installed in a narrow open excavation.

(53) "Trenchless (Untrenched)" means installed without breaking the ground or pavement surface by a construction method such as directional drilling, boring, tunneling, jacking, or auguring.

(54) "UDOT" is the Utah Department of Transportation and where referenced to be contacted, submitted to, approved by, accepted by or otherwise engaged, means an authorized representative.

(55) "Utility" or "utility facility" means privately, publicly,

cooperatively, or municipally owned pipelines, facilities, or systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, petroleum products, cable television, water, sewer, steam, waste, storm water not connected with highway drainage, and other similar commodities, which directly service the public.

(56) "Utility appurtenances" include but are not limited to pedestals, manholes, vents, drains, rigid markers, meter pits, sprinkler pits, valve pits, and regulator pits.

(57) "Utility company" is a privately, cooperatively, or publicly owned utility, including utilities owned by political subdivisions, and where referenced includes authorized representatives, contractors, and agents.

(58) "Vent" is an appurtenance designed to discharge gaseous contaminants from a casing.

R930-7-4. Scope.

(1) This rule supersedes portions of Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights of Way including Section 5 and portions relating to utility accommodation or that refer to utilities in the right of way or percent of reimbursement, which are part of R930-6 at the time of enactment of this rule.

(2) Regulations, laws, or orders of public authority or industry code prescribing a higher degree of protection or construction than provided by this rule shall govern.

R930-7-5. Application.

(1) This rule applies to privately, cooperatively, and publicly owned utility companies, including utility companies owned by political subdivisions, and shall include telecommunication, gas, oil, petroleum, electricity, cable television, water, sewer, data and video transmission lines, drainage and irrigation systems, and other similar utilities to be located, accommodated, adjusted or relocated within, on, along, across, over, through, or under the highway right of way. This rule does not apply to utility facilities that are required for UDOT highway purposes. This rule applies to underground, surface, or overhead facilities, either singularly or in combination, including bridge attachments.

(2) This rule applies to Federal-aid highway projects including local government projects. In compliance with 23 CFR 645.209(g) local governments are required to enter into formal agreements with UDOT that provide for a degree of protection to the highway at least equal to the protection provided by this rule.

R930-7-6. General Installation Requirements.

(1) General.

(a) Utility companies with facilities directly serving the public desiring to use right of way under the jurisdiction of UDOT for the installation or maintenance of any utility facility must be licensed to do so by entering into a Statewide Utility License Agreement with UDOT. This License Agreement sets forth the procedures and conditions for the issuance of encroachment permits for all installations statewide. Encroachment permits are not issued without a License Agreement first being executed. UDOT may impose additional restrictions or requirements for License Agreements or encroachment permits.

(b) A permitted facility shall, if necessary, be modified by the utility company to improve safety or facilitate alteration or maintenance of the right of way as determined by UDOT.

(c) Companies or entities that do not provide direct utility service to the public are prohibited from installing or constructing longitudinal facilities or site towers or poles within the right-of-way by permit. UDOT will not issue any permits for this type of facilities.

(2) License Agreements or Statewide Utility License Agreements.

(a) Agreements are executed by UDOT and utility companies to set forth the terms and conditions for the accommodation and maintenance of utility facilities within the right of way. A License Agreement is required for, but does not guarantee the approval of encroachment permits.

(b) As part of executing a License Agreement with UDOT, owners of facilities located in the right of way are required to post a continuous bond in the amount of $100,000, naming UDOT as the insured, to guarantee satisfactory performance. The Statewide Utilities Engineer may approve a lesser amount.

(c) A public utility is exempt from the bond requirements described in this section if the public utility:

(i) is a member of the municipal insurance pool;

(ii) is a political subdivision; or

(iii) at UDOT's option carries liability insurance with minimum coverage of $1,000,000 per occurrence and as more specifically described in its License Agreement.

(d) Upon discovery of utility caused damage to the highway or to the right of way, UDOT may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way. The utility company is liable for all restoration costs incurred as a result of damages caused by its utility, and its liability is not limited to the amount of the bond.

(e) License agreements may be terminated at any time by either party upon 30 days advance written notice to the other. Permits previously issued and approved under a terminated agreement are not affected and remain in effect on the same terms and conditions set forth in the agreement and permits. The obligation to maintain the $100,000 bond continues until the utility company's facilities are removed from UDOT's right of way.

(3) Emergency Work.

(a) In all emergency work situations, the utility company or its representative shall contact UDOT immediately and on the first business day shall contact UDOT to complete a formal permit. Failure to contact UDOT for an emergency work situation and obtain an encroachment permit within the stated time period is considered to be a violation of the terms and conditions of the utility company's license agreement. At the discretion of the utility company, emergency work may be performed by a bonded contractor, public agency, or a utility company. None of the provisions of this rule are waived for emergency work except for the requirement of a prior permit.

(4) One Call Requirements.

(a) Underground facilities are not permitted within the right of way unless the utility company subscribes to Blue Stakes of Utah and other appropriate "call-before-you-dig" systems, or otherwise provides utility plans as detailed in Section R930-7-11(6)(a) of this rule.

(5) Preservation of New Pavement.

(a) Cuts or open excavations on newly constructed, paved, or overlaid highways are not allowed for two years. If an emergency cut or excavation occurs, the responsible utility company shall comply with any special conditions imposed by UDOT regarding restoration of the roadway.

(6) Encroachment Permits.

(a) Encroachment Permits on State Highways.

Utility companies shall obtain an encroachment permit from UDOT for the installation and maintenance of utility facilities on the right of way. Encroachment permits are approved or disapproved by UDOT. Applications for encroachment permits are submitted to the Region Permits Officers by the utility company or its contractor. No utility company or utility company contractor shall begin any utility work on the right of way until an approved encroachment permit is issued by UDOT and the utility company is authorized to proceed in writing. Prior to the issuance of encroachment permits, fees are assessed to cover related costs incurred by

UDOT including costs for planning, coordination, and utility plan review.

If the utility company expects work to significantly impact travel lane capacity, UDOT recommends the utility company contact the appropriate Region Permit Office to discuss concepts in advance of submitting an encroachment permit application.

Utility companies shall submit two sets of plans depicting the proposed installation. The plans shall be sized as required by UDOT and include utility company identification, work location, utility type and size, type of construction, vertical and horizontal location of facilities relative to the centerline of road, location of all appurtenances, trench details, right of way limits, and traffic control plans. Traffic control plans shall conform to the Utah MUTCD as outlined in Section R930-7-7(1)(d), are mandatory for each instance of utility construction or maintenance, and shall be attached to each permit application.

Utility companies may authorize their contractors to obtain permits on their behalf. All terms and conditions set forth in the License Agreement apply. The utility company's construction forces or the utility contractor shall carry a copy of the approved permit at all times while working on the right of way.

(b) Bonding and Liability Insurance Requirements.

(i) Individual (one-time use) Encroachment Permit Bonding Requirements. As authorized by Sub-section 72-7-102(3)(b)(i) this rule requires encroachment permit applicants to post a Performance and Warranty Bond, using UDOT's approved bond form, for a period of three years from the date of beginning of work or two years from the end of work, whichever provides the longer period of coverage. A separate Performance and Warranty Bond is required for each individual encroachment permit. Political subdivisions of the state are not required to post a bond unless the political subdivision fails to meet the terms and conditions of previous permits issued as determined by UDOT. The amount of the bond is determined by the UDOT Region Permits Officer based on the scope of work being performed but will not be less than $10,000.

(ii) Statewide (multiple use) Encroachment Permit Bonding Option. In lieu of posting multiple individual one-time use bonds, encroachment permit applicants who routinely acquire encroachment permits may elect to post a statewide performance and warranty bond, using UDOT's approved bond form. A statewide bond satisfies bonding requirements for work in all UDOT Regions. The bond amount is determined by UDOT but will not be less than $100,000. This bond is in addition to the bond for the License Agreement.

(iii) Inspection Bond. UDOT may require an additional inspection bond to ensure payment for UDOT field review and inspection costs before an encroachment permit is granted.

(iv) Proceeds Against the Bond. UDOT may proceed against the bond to recover all expenses incurred if payment is not received from the permit applicant within 45 calendar days of receiving an invoice. Upon discovery of utility caused damage to the highway or to the right of way, UDOT may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way due to utility caused damages. Failure by the utility company to maintain a valid bond in the amounts required shall be cause for denying issuance of future permits and for the removal of the utility from the right of way.

(v) Liability Insurance Requirements. Permit applicants are also required to provide a certificate of liability insurance in the minimum amounts of $1,000,000 per occurrence and $2,000,000 in aggregate. Failure to meet this requirement will result in application denial. Liability insurance coverage is required throughout the life of the permit and cancellation will result in permit revocation.

(vi) Information about bond forms and liability insurance requirements are available on UDOT's website at: http://www.udot.utah.gov/go/encroachmentpermit

(c) Assignment of Permits. Permits shall not be assigned without the prior written consent of UDOT. All assignees shall be required to execute a License Agreement.

(d) Indemnification. Permit holders performing utility work on the right of way shall, at all times, indemnify and hold harmless UDOT, its employees, and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance, repair, or any other related operation during the work or as a result of the work. Permit holders shall also be responsible for the completion, restoration, and maintenance of any excavation for a period of three years unless UDOT requires a longer period of indemnification due to specific or unique circumstances.

(e) Cancellation of Permits and Termination of License Agreement. The following situations will cause the cancellation of permits and/or termination of the License Agreement:

(i) A utility company's failure to maintain a valid bond in the amount required;

(ii) A utility company's failure to comply with the terms and conditions of the License Agreement;

(iii) A utility company's failure to comply with the requirements of the encroachment permit; and

(iv) A utility company's failure to pay any sum of money for costs incurred by UDOT in association with installation or construction review, inspection, reconstruction, repair, or maintenance of the utility facilities.

When the permit is canceled, UDOT also may remove the facilities and restore the highway and right of way at the sole expense of the utility company. Prior to any cancellation, UDOT shall notify the utility company in writing, setting forth the violations, and will provide the utility company a reasonable time to correct the violations to the satisfaction of UDOT. UDOT may also not issue any further permits to utility companies that do not comply with this rule, permit requirements, or the License Agreement.

R930-7-7. General Design Requirements.

(1) General.

(a) Joint use of state right of way may impact both the highway and the utility. Each utility company requesting the use of right of way for the accommodation of its facilities is responsible for the proper planning, engineering, design, construction, and maintenance of proposed installations. The utility company shall coordinate with UDOT and develop its projects to meet design standards and to optimize safety, cost effectiveness, and efficiency of operations for both the utility company and the state. Utility companies are directed to the following AASHTO publications for assistance:

(i) Roadside Design Guide;

(ii) A Policy on Geometric Design of Highways and Streets;

(iii) A Guide for Accommodating Utilities within Highway Right of Way; and

(iv) A Policy on the Accommodation of Utilities within Freeway Right of Way.

(b) The utility company is responsible for the design, construction, and maintenance of its facilities installed within the right of way. All elements of these facilities including materials used, installation methods, and locations shall be subject to review and approval by UDOT.

(c) Plans, Drawings and Specifications. The utility company shall provide UDOT with comprehensive plans, drawings and specifications as may be required for all proposed utility facilities within the right of way. Utility plan submittals shall contain physical features of the utility site including, but not limited to the following:

(i) highway route number;

(ii) highway mile post locations;

(iii) map with route and site location;

(iv) existing features such as manholes, structures,

drainage facilities, other utilities, access controlled and right of way lines, center line of highway relative to the utility facility location, and relevant vertical information;

(v) plan and drawing scales; and

(vi) legend including definition of symbols used.

The plans, drawings, and specifications shall also contain administrative information, identification and type of materials to be used, relevant information on adjacent land classification and ownership, related permits and approvals if required, and identification of the responsible Engineer of Record.

(d) Traffic Control Plans. The utility company shall provide traffic control plans (TCP) that conform to the current Utah MUTCD and UDOT Traffic Control Standards and Specification.

(e) The utility company is responsible to ensure compliance with industry codes and standards, the conditions and special provisions specified in the permit, and applicable laws, rules and regulations of the State of Utah and the Code of Federal Regulations.

(f) All utility facility installations located in, on, along, across, over, through, or under the surface of the right of way, including attachments to highway structures, are the responsibility of the utility company and, as a minimum, shall meet the following utility industry and governmental requirements.

(i) Electric power and communications facilities shall conform to the current applicable National Electric Safety Code.

(ii) Water, sewage and other effluent lines shall conform to the requirements of the American Public Works Association or the American Water Works Association.

(iii) Pressure pipelines shall conform to the current applicable sections of the standard code of pressure piping of the American National Standards Institute, 49 CFR 192, 193 and 195, and applicable industry codes.

(iv) Liquid petroleum pipelines shall conform to the current applicable recommended practice of the American Petroleum Institute for pipeline crossings under railroads and highways.

(v) Any pipelines carrying hazardous materials shall conform to the rules and regulations of the U.S. Department of Transportation governing the transmission of the materials.

(vi) Telecommunications with longitudinal installations within Interstate, Freeway and other Access Controlled Highway right of way shall conform to R907-64.

(2) Subsurface Utility Engineering.

(a) The use of Subsurface Utility Engineering (SUE) shall be required as an integral part of the design for new utility facility installations on the right of way when determined by UDOT to be warranted.

R930-7-8. Definitive Design Requirements.

(1) Location Requirements.

(a) Longitudinal Installations. The type of utility construction, vertical clearances, lateral location of poles and down guys, and related ground mounted utility facilities along roadways are factors of major importance in preserving a safe traffic environment, the appearance of the highway, and the efficiency and economy of highway construction and maintenance. Longitudinal utility facilities shall be located on a uniform alignment and as close to the right of way line as practicable. The joint use of pole lines is acceptable and encouraged; however, all installations shall be located so that all servicing may be performed with minimal traffic interference. The following additional requirements apply to longitudinal installations.

(i) Utility facilities shall be located so as to minimize the need for future utility relocations due to highway improvements, avoid risks to the highway, and not adversely impact environmentally protected areas.

(ii) The location of utility installations along urban streets with closely abutting structures such as buildings and signs generally requires special considerations. These considerations shall be resolved in a manner consistent with the prevailing limitations and as approved by UDOT.

(iii) The location of utility facilities and associated appurtenances shall be in accordance with the Americans with Disabilities Act.

(iv) The horizontal location of utility facilities and appurtenances within the right of way shall conform to the current edition of the AASHTO Roadside Design Guide.

(v) Adequate warning devices, barricades, and protective devices must be used to prevent traffic hazards. Where circumstances necessitate the excavation closer to the edge of pavement than established above, concrete barriers or other UDOT approved devices shall be installed for protection of traffic in accordance with UDOT Traffic Control Standards and UDOT's Supplemental Drawings.

(vi) There are greater restrictions on the accommodation of utility facilities within interstate, freeway, and other access controlled highway right of way. See Section R930-7-10 for details.

(b) Overhead Installations.

(i) Minimal vertical clearances for installed overhead lines are 18 feet for crossings and longitudinal installations, and 23 feet for intersections. In addition, the vertical clearance for overhead lines above the highway and the vertical and lateral clearance from bridges and above ground UDOT facilities shall meet or exceed the current edition of the National Electrical Safety Code. Where overhead lines cross UDOT above ground facilities, including but not limited to signs, traffic signal heads, poles, and mast arms, vertical and lateral clearance shall meet OSHA working clearances for electrical lines in effect at the time of the installation which will accommodate maintenance work by UDOT personnel without having to discharge or shield the lines.

(ii) Utility companies planning to attach cable to other utility company poles shall obtain approval from the owner of the poles prior to a permit being issued by UDOT.

(iii) The utility facility shall conform to the current edition of the AASHTO Roadside Design Guide. Where there are existing curbed sections, utility facilities shall be located as far as practicable behind the face of curbs and, where feasible, behind sidewalks at locations that will not interfere with adjacent property use. In all cases there shall be a minimum of two feet clearance behind the face of the curb. All cases shall be resolved in a manner consistent with prevailing limitations and conditions.

(iv) Before locating a utility facility at other than the right of way line, consideration shall be given to designs using self-supporting, armless single pole construction, with vertical alignment of wires or cables, or other techniques permitted by government or industry codes that provide a safe traffic environment. Deviations from required clearances may be made where poles and guys can be shielded by existing traffic barriers or placed in areas that are inaccessible to vehicular traffic.

(v) Where irregular shaped portions of the right of way extend beyond or do not reach the normal right of way limits, variances in the location of utility facilities may be allowed to maintain a reasonably uniform alignment and thereby reduce the need for guys and anchors between poles and roadway.

(c) Subsurface Installations.

(i) Underground utilities may be placed longitudinally outside of the pavement by plowing or open trench method. Underground utilities shall be located on a uniform alignment and as near as practicable to the right of -way line to provide a safe environment for traffic operations, preserve the integrity of the highway, and preserve space for future highway improvements or other utility facility installations. The

allowable distance from the right of way line will generally depend upon the terrain and obstructions such as trees and other existing underground and overhead objects. On highways with frontage roads, longitudinal installations shall be located between the frontage roads and the right of way lines. Utility companies shall include the placement of markers referenced in Section R930-7-11(5).

(ii) Unless UDOT grants a deviation, underground utility installations across existing roadways shall be performed by trenchless method in accordance with UDOT requirements and casings may be required. Pits shall be located outside of the clear zone and at least 30 feet from the edge of the nearest through traffic lane and at least 20 feet from the edge of pavement on ramps. On low traffic roadways and frontage roads, as determined by UDOT, bore pits shall be at least ten feet from the edge of pavement, five feet beyond toe of slope under fill sections and at least five feet from the face of curb and meet clear zone requirements from the edge of the traveled way whichever is greater. Bore pits shall be located and constructed so as to eliminate interference with highway structural footings. Shoring shall be used where necessary.

TABLE 1

Bore Pit Locations

Bore Pit Set Back	Outside Clear Zone
At least ten feet from the edge of pavement, five feet beyond toe of slope under fill sections and at least five feet from the face of curb	At least 30 feet from the edge of the nearest through traffic lane and at least 20 feet from the edge of pavement on ramps.

(iii) The depth of bury for all utility facilities under pavement shall be a minimum of four feet below the top of pavement or existing grade including open drainage features. Where utility facilities are installed within 20 feet from the edge of pavement, the depth of bury shall be a minimum of five feet below top of grade so as to allow for installation of UDOT signs or delineators. Utility facilities under sidewalks shall be installed a minimum of three feet below the top of sidewalk.

(iv) Utility facilities installed greater than 20 feet from the edge of pavement shall be installed a minimum depth of three feet below grade. Specific types of facilities such as high pressure gas lines or petroleum lines may require additional cover.

(v) All underground utilities installed in the right of way must meet the minimum standards for compaction as outlined in the current edition of the UDOT Standards and Specifications for Road and Bridge Construction.

(vi) Where minimum depth of bury is not feasible, the facility shall be rerouted or, if permitted by UDOT, protected with a casing, encasement, concrete slab, or other suitable protective measures.

TABLE 2

SUMMARY OF UDOT DEFINITIVE UTILITY REQUIREMENTS
MINIMUM DEPTH OF BURY
Longitudinal and Crossing Installations
All underground utilities (cased and uncased)

Under Pavement Surface	Under Sidewalks	Under Ditch	Less than 20 ft. from edge of pavement	Greater than 20 ft. from edge of pavement
Min. of four ft. below top of pavement	Min. of three ft. below top of sidewalk	Min. of three ft. below low point of ditch	Min. of five ft. below natural grade	Min. of three ft. below natural grade

(d) Crossings.

(i) Utility crossings shall be at 90 degrees unless a deviation is approved by UDOT. Crossing installations under paved surfaces shall be by trenchless methods. Jetting by means of water or compressed air is not permitted.

(ii) Utility crossings shall be avoided in deep roadway cuts, near bridge footings, near retaining and noise walls, at highway cross drains where flow of water may be obstructed, in wet or rocky terrain where it is difficult to attain minimum cover, and through slopes under structures.

(e) Median Installations.

(i) Overhead utility facilities such as poles, guys, or other related facilities shall not be located in highway medians. Deviations may be considered for crossings where wide medians provide for sufficient space to meet clear zone requirements from the edges of the travelled ways.

(f) Appurtenances.

(i) Utility appurtenances shall be located outside the clear zone and as close to the right of way line as practicable. Where these requirements cannot be met and no feasible alternative exists, a deviation to locate appurtenances within the clear zone in areas that are shielded by traffic barriers may be considered after the utility company provides written justification for such location for UDOT review. Cabinets, regulator stations, and other similar utility components shall not be located on the right of way unless they are determined by UDOT to be sufficiently small to allow a deviation.

(ii) Manholes, valve pits, and similar appurtenances shall be installed so that their uppermost surfaces are flush with the adjacent undisturbed surface.

(iii) Utility access points and valve covers shall be located outside the roadway where practicable. In urbanized areas where no feasible alternative to locating utility access points and valve covers outside of the roadway exists, the utility company must coordinate with UDOT to meet safety, operational, and maintenance requirements of both the utility company and UDOT.

(iv) Utility companies shall avoid placing manholes in the pavement of high speed and high volume highways. Deviations may be considered after written justification for such location is submitted by the utility company and reviewed and approved by UDOT. New manhole installations shall be avoided at highway intersections and within the wheel path of traffic lanes.

(v) Vents, drains, markers, utility access holes, shafts, shut-offs, cross-connect boxes, pedestals, pad-mounted devices, and similar appurtenances shall be located along or across highway rights of way in accordance with the provisions of the Americans With Disabilities Act.

(2) Environmental Compliance.

(a) The utility company shall comply with all applicable state and federal environmental laws and regulations, and shall obtain necessary permits. Environmental requirements include but are not limited to the following.

(i) Water Quality. A "Storm Water General Permit for Construction Activities" is required from the Utah Division of Water Quality for disturbances of one or more acres of ground surface.

(ii) Wetlands and Other Waters of the U.S. A "Section 404 Permit" is required from the U.S. Army Corps of Engineers for any impact to a wetland or water of the U.S.

(iii) Threatened or Endangered (T and E) Species. Comply with the Endangered Species Act; avoid impacts to T and E species or obtain a Permit from the U. S. Fish and Wildlife Service.

(iv) Historic and Archaeological Resources. Comply with the "National Historic Preservation Act"; avoid impacts to historic and archaeological resources. If resources could be impacted, contact the Utah State Historic Preservation Office.

(b) The utility company is responsible for environmental impacts and violations resulting from construction activities performed by the utility company or its contractors.

(c) If UDOT discovers or is made aware of a violation by the utility company or a failure to comply with state and federal environmental laws, regulations and permits, UDOT may revoke the permit, notify appropriate agencies, or both.

(3) Installation of Utilities in Scenic Areas.

(a) The type, size, design, and construction of utility facilities in areas of natural beauty shall not materially alter the scenic quality, appearance, and views from the highway or roadsides. These areas include scenic strips, overlooks, rest areas, recreation areas, adjacent rights of way and highways passing through public parks, recreation areas, wildlife and waterfowl refuges, and historic sites. Utility installations in these areas shall not be permitted. Deviation from this requirement may be allowed if there is no reasonable or feasible alternative as determined by UDOT based on written justification submitted by the utility company. On Federal-aid highways, all decisions related to utility installations within these areas shall be subject to the provisions detailed in 23 CFR 645.209(h).

(i) New underground utility installations may be permitted within scenic strips, overlooks, scenic areas, or in the adjacent rights of way, when they do not require extensive removal, or alteration of trees, and other shrubbery visible to the highway user, or do not impair the scenic appearance of the area.

(ii) New overhead installations of communication and electric power lines are not permitted in such locations unless there is no feasible and reasonable alternative as determined by UDOT. Overhead installations shall be justified to UDOT by demonstrating that other locations are not available and that underground facilities are not technically feasible, economical or are more detrimental to the scenic appearance of the area.

Any installation of overhead facilities shall be made at a location and in a manner that will not detract from the scenic quality of the area being traversed. The installation shall utilize a suitable design and use materials aesthetically compatible to the scenic area, as approved by UDOT.

(4) Casing and Encasement Requirements.

(a) General. A carrier pipe is sometimes installed inside of a larger diameter pipe defined as a casing. Casings are typically used to provide complete independence of the carrier pipe from the surrounding roadway structure, and to provide adequate protection to the roadway from leakage of a carrier pipeline. It also provides a means for insertion and replacement of carriers without access or disturbance to through-traffic roadways.

(b) Casing requirements for crossing installations.

(i) All pipelines under pressure crossing under the roadbed of highways shall be in casings unless the pipeline is welded steel, meets industry corrosion protection standards, complies with federal and state requirements, and meets accepted industry standards regarding wall thickness and operating stress levels. In some cases UDOT may require a casing regardless of these exceptions if needed to protect the roadway, maintain public safety, or both.

(ii) In urban areas where space is limited for venting or where small pipelines are crossing, specifically intermediate high pressure lines, deviations for casing may be granted by UDOT.

(iii) Where a casing is required, it must be provided under medians, from top of back-slope to top of back-slope for cut sections, five feet beyond toe of slope under fill sections, five feet beyond face of curb in urban sections and all side streets, and five feet beyond any structure where the line passes under or through the structure. Deviations must be approved by UDOT. On freeways, expressways, and other access controlled highways, casings shall extend to the access control lines.

(iv) Utility installations by trenchless technologies, such as jacking, boring, or horizontal directional drilling methods, may be placed under highways without a casing pipe if approved by a UDOT representative.

(v) Where minimum bury is not feasible, the facility shall be rerouted or protected with a casing, concrete slab, or other suitable measures as determined by UDOT.

(c) Casings shall be considered for the following conditions:

(i) as an expediency in the insertion, removal, replacement, or maintenance of carrier pipe crossings of freeways, expressways, and other access controlled highways, and at other locations where it is necessary to avoid trenched construction;

(ii) as protection for carrier pipe from external loads or shock either during or after construction of the highway; and

(iii) as a means of conveying leaking fluids or gases away from the area directly beneath the roadway to a point of venting at or near the right of way line, or to a point of drainage in the highway ditch or a natural drainage way.

(d) UDOT may require casings for pressurized carriers or carriers of a flammable, corrosive, expansive, energized, or unstable material.

(e) Trenchless installations of coated carrier pipes shall be cased. Permission to deviate from this requirement may be granted where assurance is provided against damage to the protective coating.

(f) Encasement or other suitable protections shall be considered for pipelines with less than minimum cover, such as those near bridge footings or other highway structures, or across unstable or subsiding ground, or near other locations where hazardous conditions may exist.

(g) Rigid encasement or suitable bridging shall be used where support of pavement structure may be impaired by depression of flexible carrier pipe. Casings shall be designed to support the load of the highway and superimposed loads thereon and, as a minimum, shall be equal to or exceed the structural requirements of UDOT highway culverts in the UDOT Bridge Design Manual.

(h) Casings shall be sealed at the ends using suitable material to prevent water and debris from entering the annular space between the casing and the carrier. Such installations shall include necessary appurtenances, such as vents and markers.

(5) Mechanical and Other Protective Measures for Uncased Installation.

(a) When highway pipeline crossings are installed without casings or encasement, the following are suggested controls for providing mechanical or other protection.

(i) The carrier pipe shall conform to utility material and design requirements and utility industry and government codes and standards. The carrier pipe shall be designed to support the load of the highway plus superimposed loads operating under all ranges of pressure from maximum internal to zero pressure. Such installations shall use a higher factor of safety in the design, construction, and testing than would normally be required for cased construction.

(ii) Suitable bridging, concrete slabs, or other appropriate measures shall be used to protect existing uncased pipelines which may be vulnerable to damage from construction or maintenance operations. Construction or maintenance activities shall not proceed until protective measures are approved by UDOT.

(b) Uncased crossings of welded steel pipelines carrying flammable, corrosive, expansive, energized, or unstable materials may be permitted if additional protective measures are taken in lieu of encasement. Such measures shall use a higher factor of safety in the design, construction, and testing of the uncased carrier pipe, including thicker wall pipe, radiograph testing of welds, hydrostatic testing, coating and wrapping, and cathodic protection.

R930-7-9. Utilities on Highway Structures.

(1) General.

(a) The installation of utility facilities on highway structures can adversely impact the integrity and capacity of the structure, the safe operation of traffic, maintenance efficiency, and the aesthetic appeal of the structure. Utility facilities shall not be installed on highway structures except in extreme cases. When installation of utilities at an alternate location exceeds the cost of attaching to the structure by four times, UDOT will consider such an installation. The utility company shall submit documentation requesting installation on highway structures to the UDOT Structures Division for review and approval. Attachment of a utility facility will only be considered if the structure is adequate to support the additional load. This adequacy must be verified by a load rating completed by the utility company following UDOT's Load Rating Policies and Procedures, submitted to UDOT along with the necessary documentation including calculations and a load rating model.

Installing utility facilities within 50 feet of structures may impact the design, installation, operation, maintenance and safety of the structures, and the utility facilities. Utility companies shall address potential impacts when projects are proposed to ensure compatibility between utility facilities and UDOT structures and to assure all relevant utility industry codes and UDOT structural requirements are adequately addressed.

(2) Installation on Highway Structures.

(a) If UDOT allows a structure installation, it shall be at a location and of a design subject to review and approval by UDOT's Structures Department. Utility installations on structures shall not be considered unless the structure is of a design that is adequate to support the additional load and can accommodate the utility without compromising highway features. In addition, the utility installation shall be subject to the following requirements.

(i) Due to variations in highway structure designs, site-specific conditions, and other considerations, there is no standardized method by which utilities are installed on structures. Therefore, each proposed installation shall be considered on its individual merits and shall be individually designed for the specific structure.

(ii) Where installations of pipelines carrying hazardous materials are allowed, the pipeline shall be cased. The casing shall be open or vented at each end so as to prevent possible build-up of pressure and to detect leakage. Where located near streams, casings shall be designed and installed so that leakage does not compromise the stream. If a deviation is allowed for no casing, additional protective measures shall be used including higher standards for design, safety, construction and testing of the pipeline than would normally be required for cased construction.

(iii) All pipeline installations carrying gas or liquid under pressure which by their nature may cause damage or injury if leaked, shall be installed with emergency shutoff valves. Such valves shall be placed within an effective distance on each side of the structure, as approved by UDOT, and shall be automatic if required by UDOT.

(iv) Utility installations on highway structures shall not reduce vertical clearances above rivers, streams, roadway surfaces or rails. Installations should be designed to occupy a position beneath the deck in an interior bay of a girder or beam, or within a cell of a box girder bridge. Installations shall always be above the bottom of girders on a girder bridge or above the bottom of the bottom cord of a truss bridge. Utility installations outside of a bridge structure are unsightly and susceptible to damage and will only be approved by UDOT if there is no reasonable alternative.

(v) All utility facilities installed on highway structures shall be constructed of durable materials, designed with a long life expectancy, and must be installed in a manner that will minimize routine servicing and maintenance.

(vi) Utility facility mountings shall be of sufficient strength to carry the weight of the utility and shall be of a design and type that will not rattle or loosen due to vibrations caused by vehicular traffic. Acceptable utility installation methods are hangers or roller assemblies suspended either from inserts from the underside of the bridge floor or from hanger rods clamped to the flange of a superstructure member. Bolting through the bridge floor is not permitted. Where there are transverse floor beams sufficiently removed from the underside of the deck, the utility placement shall allow adequate clearance to enable full inspection of both the deck and the utility line. UDOT may consider a proposal to support the utility line on top of the floor beams.

(vii) Communication and electric power line installations shall be suitably insulated, grounded, and preferably carried in protective conduit or pipe from the point of exit from the ground to re-entry. Cable shall be carried to a manhole located beyond the back-wall of the structure. Access manholes are not allowed in a bridge deck.

(viii) Utility installations shall provide for lineal expansion and contraction due to temperature variations in conjunction with bridge movement.

(ix) All utility facility clearances from structure members must conform to all governing codes and shall not render any portion of the structure inaccessible for maintenance purposes.

(x) The utility company shall be responsible for restoration or repair of any portion of a structure or highway damaged by utility facility installation or use.

(xi) The expansion of an existing utility facility carried by an existing structure may be permitted if the expansion does not adversely impact the performance and load carrying capacity of the structure and otherwise complies with this rule.

(3) Utility Company Responsibilities.

(a) It is the responsibility of the utility company to obtain approval for a highway structure installation. The utility company shall ascertain the extent of UDOT's requirements prior to initiating the design for installation. A Utah registered Professional or Structural Engineer shall be responsible for the design if the installation is allowed. The utility company must prepare and submit complete design documents showing all details of the proposed work. These documents shall include plans, calculations, updated load rating with a Virtis load rating model, the permit application, and any other necessary information. The utility company shall be responsible for protecting, maintaining or relocating its utility installation, including the arrangement of service interruptions, to accommodate future UDOT structure work.

(b) All materials incorporated in the design must be certifiable for quality and strength and full specifications must be provided in support of the design.

(c) Adequate written justification must support the need for installing the utility facility on the structure and demonstrate that there is no viable cost-effective alternative.

(d) All components of the utility attachment shall be protected from corrosion. Steel components shall be stainless, galvanized or painted in accordance with the current UDOT Standard Specifications for Highway and Bridge Construction.

R930-7-10. Utilities within Interstate, Freeway and Access Controlled Right-of-Way.

(1) General Provisions. There are two basic types of access control.

No Access - does not allow access to the through-traffic lanes except at interchanges. Crossings at grade and direct driveway connections are prohibited. Access is controlled by fencing. This is typical of interstates and freeways.

Limited Access - provides access to selected roads. There may be some crossings at grade and some private driveway

connections. This is typical of expressways and certain other highways.

(2) Factors UDOT may consider for allowing accommodation include distance between distribution points, terrain, cost, and prior existence.

(3) Longitudinal telecommunication installations may be allowed under Rule R907-64.

(4) Pursuant to FHWA regulations, UDOT may allow longitudinal accommodation of utility facilities but with greater restrictions within no access and limited access highway right of way as follows:

(a) No access: longitudinal installations on highways with no access are not permitted except in cases where no other feasible location exists and under strictly controlled circumstances. FHWA approval is required for installations on interstate facilities. Longitudinal telecommunication facilities are allowed pursuant to Utah Code Section 72-7-108; and

(b) Limited Access: longitudinal installations on highways with limited access are generally not permitted.

(5) Utility facilities are allowed to cross no access and limited access highway right-of-way but with additional requirements as noted below in Section R930-7-10(7).

(6) Longitudinal Utility Facilities.

(a) In addition to the requirements in Section R930-7-8(1)(a), the following requirements apply.

(i) Service connections are not permitted within no access highway right of way. Service connections are not permitted within limited access highway right of way unless no reasonable alternative exists as demonstrated by the utility company and as reviewed and approved by UDOT.

(ii) Service, maintenance, and operation of utilities installed along and within no access highway right of way may not be conducted from the through-traffic roadways or ramps. All maintenance activities must be accessed from a point approved by UDOT and FHWA.

(iii) An existing utility facility within the right of way acquired for an interstate, freeway, or access controlled highway project may remain if it can be serviced, maintained, and operated without access from the through-traffic roadways or ramps, and it does not adversely affect the safety, design, construction, operation, maintenance, or stability of the interstate, freeway, or access controlled highway. Otherwise, it shall be relocated.

(iv) Where approval for installation is permitted, utility installations and related components shall be buried parallel to the interstate, freeway, or access controlled highway and shall be located within five feet of the outer most right of way limits. Utility appurtenances shall be located as close as possible to the right of way line.

(v) An existing utility carried on an interstate, freeway, or access controlled highway structure crossing a major valley or river may be permitted by UDOT to continue to be carried at the time the route is improved if the utility facility is serviced without interference to the traveling public.

(7) Utility Crossings.

(a) In addition to the requirements in Section R930-7-8(1)(d), the following requirements apply.

(i) A utility following a crossroad or street which is carried over or under an interstate, freeway, or access controlled highway must cross the interstate, freeway, or access controlled highway at the location of the crossroad or street in such a manner that the utility can be serviced without access from the through-traffic roadways or ramps.

(ii) Overhead utility lines crossing an interstate, freeway, or access controlled highway shall be adjusted so that supporting structures are located outside access control lines. In no case shall the supporting poles be placed within the clear zone. Where required for support, intermediate supporting poles may be placed in medians of sufficient width that provide the clear zone from the edges of both travelled ways. If additional lanes are planned, the clear zone shall be determined from the ultimate edges of the travelled way. When right of way lines and access control lines are not the same, such as when frontage roads are provided, supporting poles may be located in the area between them.

(iii) At interchange areas, supports for overhead utility facilities will be permitted only if located beyond the clear zone of traffic lanes or ramps, sight distance is not impaired, and can be safely accessed.

(iv) Manholes and other points of access to underground utilities may be permitted within the right of way of an interstate, freeway, or access controlled highway if they can be serviced or maintained without access from the through-traffic roadways or ramps. When right of way lines and access control lines are not the same, such as when frontage roads are provided, manholes and other points of access may be located in the area between them.

(v) Where a casing is not otherwise required, it shall be considered as expedient in the insertion, removal, replacement, or maintenance of carrier pipes crossing interstate, freeways, or access controlled highways. Casings shall extend to the access control lines. See Section R930-7-8(4).

(8) Longitudinal Telecommunications Installation.

(a) Installation must comply with R907-64.

(9) Wireless Telecommunications Facilities.

(a) Facilities must comply with R907-64.

R930-7-11. Utility Construction and Inspection.

(1) General Provisions.

(a) The method used for utility work is generally determined by local conditions. The location, terrain, obstructions, soil conditions, topography, and UDOT standards to maintain the integrity and safety of the right of way and roadway are important considerations for the proper placing of utilities. Familiarity and compliance with this rule will facilitate the construction process for utility companies.

(b) UDOT may perform routine inspection of utility construction work to monitor compliance with the license agreement, encroachment permit and with state and federal regulations. A permit may be revoked for cause if a utility company or contractor is not complying with the terms and limitations of the permit which will require a new permit at the contractor's expense to proceed with the work.

(c) Costs associated with the inspection are the responsibility of the utility company. Failure to pay inspection invoices issued by UDOT may result in revocation of the permit and may require the posting of an inspection bond on future permit applications.

(2) Utility Construction and Maintenance.

(a) No utility construction work by a utility company or a utility company's contractor may begin until a written encroachment permit has been issued to the utility company by UDOT.

(b) Traffic control for utility construction and maintenance operations shall conform to UDOT's current accepted Utah MUTCD or UDOT Traffic Control Plans, whichever is more restrictive. All utility construction and maintenance operations shall be planned to keep interference with traffic to an absolute minimum. On heavily traveled highways, utility operations interfering with traffic shall not be conducted during periods of peak traffic flow. This work shall be planned so that closures of intersecting streets, road approaches, or other access points are held to a minimum.

(c) The utility company shall not begin any work on UDOT right of way until the permit is issued and notice to proceed is given to the utility company by UDOT. After notice to proceed is received, the utility company shall complete construction in accordance with UDOT requirements.

(d) When highway utility construction or maintenance activities involve existing underground utility facilities, utility company or contractor shall comply with Title 54, Chapter 8a, Damage to Underground Utility Facilities.

(e) Utility work shall be completed within the number of days specified in the approved permit. When the work is not completed within the specified time UDOT has the option of extending the time or revoking the permit and acting on the appropriate bond to pay for completion of the work. All time extensions granted by UDOT shall be in writing.

(f) Disturbance of areas within highway right-of-way during utility construction shall be kept to a minimum and all right of way shall be restored to the satisfaction of UDOT. All utility construction methods used within the highway right of way shall be performed in accordance with current Standard Specifications for Highway and Bridge Construction, UDOT Permit Excavation Handbook, the provisions of this rule, and encroachment permit requirements. Unsatisfactory construction work, as determined by UDOT's inspector, shall promptly be corrected to comply with appropriate standards and specifications. UDOT may issue written notification that identifies the deficiencies and the period of time to cure or correct the deficiencies. If the restoration is not performed within the specified time, UDOT may perform or have performed the corrective work and the utility company shall be responsible for all costs incurred.

(g) The utility company shall avoid disturbing or damaging existing highway drainage facilities and is responsible for repairs, including restoration of ditch flow lines. Wherever necessary, the utility company shall provide drainage away from its own facilities to avoid damage to the highway.

(h) The utility company is prohibited from spraying, cutting or trimming trees or other landscape elements unless specific written permission is obtained from UDOT. The approval of an encroachment permit does not include approval of such work unless the cutting, spraying, and trimming is clearly indicated on the permit application. In general, when permission is given, only light trimming will be permitted. When tree removal is approved, the stump shall be removed and the hole properly backfilled to natural ground density or restored as otherwise approved by UDOT. The work site shall be left clean and trash free. All debris shall be removed. Reseeding shall be performed in accordance with UDOT's approved schedule.

(i) UDOT may require that any abandoned utility pipe or conduit be removed, capped, or filled with an appropriate material acceptable to UDOT.

(j) All utility facilities located on rights of way shall be adequately maintained. Any physical modifications, relocations, additions, excavations, or impedance of traffic within the right of way shall require the submittal of a new encroachment permit application. No work may begin until the new encroachment permit is approved.

(k) Restoration of the highway right of way disturbed by excavation, grading work, or other activities shall include reseeding and restoration of existing landscaping. All areas which are denuded of vegetation as a result of construction or maintenance shall be reseeded which is subject to inspection and acceptance by UDOT.

(3) Open Trench Construction Traversing Highways.

(a) Open trench utility installations are not permitted unless an acceptable trenchless method is unfeasible such as in unsuitable soil conditions or extremely difficult rock. UDOT may also grant a deviation from requiring trenchless construction where older pavement is severely deteriorated.

(b) Open trench construction on highways is limited to areas where traffic impacts are minimal. Any pavement structure broken, disturbed, cut or otherwise damaged in any way shall be removed and replaced to a design equal to or greater than the surrounding undisturbed pavement structure, or as otherwise determined by UDOT.

(c) For open trench installations, the utility company is responsible for the restoration and maintenance of the pavement structure for three years as outlined in Section R930-7-6(6)(b), unless a deviation is granted by UDOT. When the utility company or its contractor performing the work is not equipped to or fails to properly repair the damage to the pavement structure, UDOT will repair the damage and bill the utility company for the actual costs incurred, including any administrative costs. All pavement restoration work performed by the utility company shall be completed within 48 hours after completion of the excavation and backfill.

(d) All open trench utility installations shall conform to the applicable provisions of the current UDOT Standard Specifications for Road and Bridge Construction.

(e) It is the utility company's responsibility to restore the structural integrity of the road bed, secure the utility facility against deformation and leakage, assure that the utility trench does not become a drainage channel, and that the backfilled trench doesn't impede or alter road drainage.

(f) Trenches shall be cut to have vertical faces. Maximum width shall be two feet or the outside diameter of the pipe plus one and one-half feet on each side. All trenches shall be shored where necessary and shall meet OSHA requirements.

(g) Bedding shall be provided to a depth of one-half the diameter of the pipe and shall consist of granular material, free from rocks, lumps, clods, cobbles, or frozen materials, and shall be graded to a firm surface without abrupt change in bearing value. Unstable soils and rock ledges shall be sub-excavated from beneath the bedding zone and replaced with suitable granular material.

(h) Backfill shall meet the current UDOT Standard Specification 02056 Embankment, Borrow and Backfill and 03575 Flowable Fill. Additional specifications may be required by UDOT.

(i) Pavement replacement may be performed by either the utility company or a contractor engaged by the utility company. The Region Permits Officer will determine pavement replacement requirements. The utility company is liable for three years from the date of completion of the pavement replacement for the cost of repairs if the backfill subsides or the patched pavement fails.

(j) Where a utility company fails to properly repair any damage to the pavement structure, UDOT may repair the damage and the costs, including administrative costs, will be the responsibility of the utility company.

(4) Trenchless Utility Construction.

(a) Trenchless utility installations are required for all utility crossings of highways or roadways, where practicable. This construction method is required to avoid disturbing the pavement surface, particularly where underground utilities exist on major highways, expressways, or freeways. Only UDOT approved methods may be used to install a utility under a highway.

(b) All trenchless pipeline installations shall extend under and across the entire roadway prism to a point five feet beyond the toes of the fore-slopes, borrow ditch bottom, or across the access controlled right of way lines, but never less than 15 feet from the edge of pavement or a ramp.

(c) Water jetting or tunneling may not be used. Water-assisted or wet boring may be permitted if the utility company can demonstrate to UDOT that the operation will not adversely impact the roadway and sub-grade.

(d) The size of a trenchless operation shall be restricted to the minimum size necessary for the utility installation and shall not exceed the utility facility diameter by more than 5% unless otherwise required based on equipment and product manufacturer's specifications. Grout or flowable fill backfill

shall be used for carriers or casings and for over-breaks, unused holes or abandoned carriers or casings. The composition of the grout shall be cement mortar, a slurry of fine sand or other fine granular materials.

(e) Portals including surface openings and bore pits shall be established safely beyond the highway surface and the clear zone so as to avoid impairing the roadway during installation of the pipeline.

(f) Where a bulkhead seals the pipeline portal, the portal shall be suitably offset from the surfaced area of the highway. Shoring and bulkheading shall conform to applicable federal, state, and local jurisdiction construction and safety standards. Where a bulkhead is not installed in the pipeline, the portal shall be offset no less than the vertical difference in elevation between the surfaced area of the highway and the bottom of the bore pit.

(g) The utility company shall follow manufacturer's guidelines and industry standards for equipment set-up and operation. The utility company shall assess soil conditions to determine the most appropriate installation technique. Subsurface bore paths shall be tracked and recorded by the utility company, and all failed bores shall be appropriately abandoned and backfilled by the utility company.

(h) Drilling fluids shall be prepared and used according to fluid and drilling equipment manufacturer's guidelines. The utility company shall use fluid containment pits at both bore entry and exits points, and shall use appropriate operational controls so as to avoid heaving or loss of drilling fluids from the bore. Antifreeze additives shall be non-toxic and biodegradable products.

(i) The utility company shall dispose of drilling fluids and other materials in permitted facilities that accept the types of chemicals and wastes used in the trenchless operations.

(5) Utility Markers.

(a) The location of utility facilities within highway right of way presents certain risks to construction and maintenance activities, construction personnel, and to the facility itself when work in and around the area of the utility facility is in progress. To minimize risk and maximize safety, it is the utility company's responsibility to provide identification markers and tracer wire or detectable warning tape for all buried facilities located within the right of way.

(b) A trace wire, metallic tape, or other accepted industry material approved by UDOT for locating utilities with geophysical equipment shall be properly installed with all non-metallic underground lines.

(c) The utility company shall place permanent markers identifying the location of underground utility facilities, whether they are crossing the highway or installed longitudinally along the highway. Markers shall not interfere with highway safety and maintenance operations. Preferably, markers are to be located at the right of way line if that location will provide adequate warning. The telephone number for one-call notification services to request marking the line location prior to excavation, and for emergency response, shall appear on the marker.

(d) The utility company shall maintain its markers in good condition. Color faded markers shall be replaced as necessary so that their visibility to maintenance crews and others is not impaired.

(6) GPS Requirements.

(a) It is the responsibility of the utility company to produce and maintain a set of certified reproducible plans and an electronic file showing the location of all its facilities in the right of way including overhead facilities and crossing points. The utility company is responsible to maintain an accurate file to be used by UDOT for future planning to avoid utility conflicts. These plans shall also include appropriate vertical and horizontal ties to the highway survey control.

(b) For new facility installations, the utility company shall use a survey grade Global Positioning System (GPS) to survey their facility locations and submit an electronic file to UDOT. Specific requirements for survey data will be determined by UDOT. The location survey points shall include major junction points, manholes, valves, changes in line or grade, and any other significant feature that will facilitate installation approval and future planning activities.

(c) If the utility company fails to provide UDOT with a set of plans and files showing the surveyed utility locations upon request then the utility company is required to secure the actual locations of their facilities at no cost to UDOT. If the utility company fails to provide the utility location information requested within ten days, UDOT may hire a Subsurface Utility Engineering (SUE) consultant to locate the utilities at the utility company's expense.

R930-7-12. Maintenance Responsibility.

The utility company is responsible for maintenance and liability of its utility facilities and appurtenances on UDOT right of way or on UDOT property including facilities installed without a Statewide Utility License Agreement or permit, whether operational, out of service, or abandoned.

R930-7-13. Deviations.

(1) Deviations from provisions of this rule may be allowed if they do not violate state and federal statutes, law, or regulations and UDOT has determined the use of the right of way will be for the public good without compromising the transportation purposes of the right of way.

(2) Requests for deviations with limited impact may be considered by UDOT on an individual basis, upon justification submitted by the utility company. UDOT will not consider cost to the utility company as the primary deciding factor in granting a deviation.

(3) Requests for significant deviations must demonstrate extreme hardship and unusual conditions and provide justification for the deviation. Requests must demonstrate that alternative measures can be specified and implemented and still fulfill the intent of state and federal statute and regulations. Requests for these deviations must include the following:

(a) formal request by the utility company; and

(b) an evaluation of the direct and indirect design, safety, environmental, and economic impacts associated with granting a deviation.

(4) In order for UDOT to grant a significant deviation the following approvals are necessary:

(a) formal recommendation for approval by the UDOT Region Permits Officer or the officer's supervisor;

(b) formal recommendation for approval from the UDOT Region Director;

(c) concurrence of the UDOT Statewide Utilities Engineer; and

(d) FHWA concurrence if the deviation applies to a utility facility located within a Federal-aid highway right of way.

(5) For UDOT projects that are solely state funded, UDOT may deviate from the utility relocation regulations contained in the Code of Federal Regulations by reimbursing a utility company for replacement of existing buildings with functionally equivalent buildings, if the following requirements are met:

(a) the utility company owns the property in fee that UDOT needs to acquire for its project;

(b) the utility company owns operational facilities located upon, below or above the property;

(c) the utility company owns a building on the property that provides maintenance services for the utility facility;

(d) a property purchase in accordance with 49 CFR 24 will not adequately compensate the utility company's costs to relocate and functionally re-establish the maintenance facility; and

(e) the deviation promotes the public interest.

R930-7-14. Enforcement.

(1) This rule is subject to enforcement pursuant to and as provided for in Utah Code, and may include, but not be limited to the following:

(a) administrative citations, in letter form, citing non-compliance items and proper redress requirements, including notice that UDOT may take whatever action is necessary to rectify the situation and subsequently submit a claim against the appropriate bond to recover from the utility company actual costs incurred by UDOT;

(b) increased bonding levels to recoup potential restoration costs on current or future utility projects;

(c) denial of future permits until past non-compliance is resolved;

(d) termination of the License Agreement; and

(e) legal action to secure reimbursement from the utility company for costs incurred by UDOT due to damages to the right of way or noncompliance with the permit, rule or License Agreement.

KEY: right-of-way, utilities, utility accommodation
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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 for U.S. citizens and qualified aliens authorized to work in the U.S. Child care for approved education and training activities, job search, or for an approved temporary change as defined in R986-700-703 may be authorized in accordance with rule.

(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 by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(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. To be eligible, the child must have a need for at least eight hours of child care per month as determined by the Department.

(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 up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is 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" is defined in rule R986-700-717.

(6) Payments are issued monthly based on a client's eligibility for services in that month. 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 by an eligible provider approved by the Department 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) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, does not regularly watch his or her own children at the center, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed once every twelve months. The review is not complete until the client has completed, signed and returned all necessary review forms 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 may 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 Care About Child Care 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 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;

(h) a change in the child care provider, including when care is provided at no cost;

(i) when the child has stopped attending child care or has not attended child care for at least eight hours during the month for which CC was authorized;

(j) a change in child custody, visitation, or parent-time, including any regular periods of extended change in visitation or parent-time such as extended holidays or vacations with a non-custodial parent;

(k) a change in the total cost of care for a client that is based on a change in a person(s) paying some or all of the total cost of care; and

(l) any other changes that would affect a client's eligibility for ESCC as described in rule R986-700-709.

(6) Certain reportable changes are considered allowable temporary changes when the circumstances are expected to last three months or less.

(a) The following are allowable temporary changes:

(i) Time-limited absences from work due to medical or other emergency, such as maternity leave, bed rest, or temporary medical issues of the client or an immediate family member living in the client's home if the client is responsible for the immediate family member's care;

(ii) Temporary fluctuations in earnings or hours, such as summer break for teachers or seasonal hours changes for IRS employees, that would otherwise have the effect of causing the client to fail to meet the minimum work requirements for eligibility;

(iii) Scheduled holidays or breaks in a client's educational training schedule.

(b) A client must have received an ESCC payment in the month prior to or the month of the temporary change before receiving a temporary change payment or a subsequent temporary change payment. The Department shall inform a client whose eligibility for ESCC ends due to a change in circumstances of the client's possible eligibility for temporary change child care. To receive temporary change child care, the client must request such child care within ten days of receiving a notification of possible eligibility from the Department, comply with Department procedures regarding eligibility verification, and continue to use child care during the temporary change period. Temporary change child care may not be received for more than three consecutive months.

(7) 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.

(8) If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. In some situations, the client and provider may be jointly liable. In the case of joint liability, both parties can be held liable for the entire overpayment.

(9) The Department is authorized to 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) the date the child care subsidy was issued;

(c) the subsidy amount for that provider;

(d) the copayment amount;

(e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information;

(f) the month the client is scheduled for review;

(g) the date the client's application was received; and

(h) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

(10) If a client uses a child care provider at least eight hours in the calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month, even if the client changed providers, unless the maximum subsidy payment amount for the month will not be exceeded by paying the second provider and one of the following exceptions also applies:

(a) The initial provider is no longer providing child care, is no longer an approved provider, or has been disqualified by the Department;

(b) The client relocates his or her residence and it is no longer reasonably feasible to continue using the initial provider due to travel time or distance;

(c) There is a substantial change in the days or times of day when child care is needed, such as a change in the timing of the shifts the client is working, that cannot be accommodated by the initial provider; or

(d) The Department determines a change in child care providers is necessary due to an endangerment finding for the child. The Department may, in its discretion, approve payment to a second provider due to an endangerment finding even if the maximum subsidy payment amount would be exceeded.

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. All eligible providers, including providers who receive CC grants from the Department, must meet all Child Care Development Fund (CCDF) requirements. The only eligible providers are:

(a) providers regulated through Department of Health Child Care Licensing (CCL):

(i) licensed homes;

(ii) licensed child care centers, except hourly centers; and

(iii) homes with a residential certificate.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status from CCL; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;

(b) a sibling of the child living in the home can never be approved, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(d) undocumented aliens;

(e) persons under age 18;

(f) a provider providing care for the child in another state;

(g) a sponsor of a qualified alien client applying for child care assistance;

(h) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider; or

(k) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.

(3) FFN providers must comply with all CCDF and Department requirements and will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided

to CCL:

(a) complete, sign and submit an application to CCL;

(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;

(c) pass a home inspection as provided in Department policy;

(d) complete an infant/child CPR training;

(e) complete first aid training; and,

(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) If a program or provider is not subject to licensing requirements, and the program or provider receives or wishes to receive CCDF funds but has had adverse action taken against it by CCL regarding DWS approval status or health and safety compliance, the program or provider's appeal shall be made to CCL according to CCL's procedures. An appeal based on adverse action by the Department shall be made to the Department in accordance with R986-100-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees 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 may retain the full monthly subsidy payment so long as at least eight hours of care were provided during the month and the provider is otherwise in compliance with Department rules and policies. The subsidy payment is to support an eligible client's monthly employment and training activities and allows for temporary absences and unforeseen circumstances. Having a child only attend one day per month or sporadically to receive a child care payment is a misuse of funds and will result in an overpayment and possible child care disqualification. Additionally, the subsidy payment is intended to be used to cover the provider's business expenses during the month for reserving the slot(s) and shall not be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service. Providers who choose not to apply the funds as required will be subject to an overpayment and possible child care disqualification.

(4) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Audits and investigations may be performed by a person or entity under contract with the Department. Time and attendance records for all subsidized clients must be kept for at least three years.

(5) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for three years without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.

(6) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.

(7) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.

(8) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their monthly, full-time child care rates to the local Care About Child Care agency. All providers must also report the rate for each individual child to the Department if the amount is less than the rate reported to Care About Child Care. Failure to report reduced rates may result in an overpayment.

(9) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:

(a) submit and manage bank account information;

(b) read and agree to the terms and conditions contained in the Provider Guide and in the Portal;

(c) view child care payment information;

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;

(e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:

(i) a reduced or part-time rate for an individual child in care, as applicable. This includes reporting any rate changes or updates that occur for each child once a rate has been submitted in the portal;

(ii) a child is no longer in child care;

(iii) a child is not expected to be in child care the following month;

(iv) that the provider received a greater subsidy payment amount than what was charged to the client for the month of service. Excess subsidy funds cannot be used to cover outstanding balances, copayments, or future services. The provider should notify the Department and the difference will either be deducted from the next month's subsidy payment or the funds must be returned to the Department;

(v) that a child has not attended for at least eight hours by the 25th of the month, regardless of whether the child attends or is expected to attend for at least eight hours following the 25th of the month; and

(vi) a change in financial institution account information for direct deposit.

(f) Effective February 1, 2018, between the 25th of each month and the end of the month, a licensed provider shall certify, in a manner specified by the Department, that the

licensed provider has reviewed each child's attendance and reported any reportable changes in each child's attendance, including future changes known or expected by the provider.

(10) Providers must submit a W-9 Form, Federal Employer Identification Number (EIN) or Social Security Number via the DWS Provider Portal, if required by the Department, and a 1099 will be issued annually. The Federal EIN or Social Security Number must be provided within 30 days of receipt of the first subsidy payment from the Department. Failure to submit this information shall result in the provider being removed from approved provider status.

(11) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

R986-700-707. Copayment.

(1) "Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The copayment is determined on a sliding scale and the amount of the copayment is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the copayment directly to the child care provider.

(3) If the copayment exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.

(5) The following clients are not subject to the copayment requirement:

(a) clients at or below 100% of the poverty level;

(b) clients receiving transitional child care and FEP CC as provided in rule R986-700-708.

R986-700-708. FEP CC Transitional Child Care.

(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.

(2) Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased earned income and the household meets the work requirement and income rules for ESCC. Clients receiving transitional child care are not subject to the copayment requirement. The copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not. A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP 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). An exception may be made to the minimum work requirements with Department approval when both parents are employed at their full capacity and provide requested documentation and/or verification. 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 except if approved by the Department. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify the incapacity and why the incapacity prohibits them from providing care for their children in the following ways:

(i) receipt of disability benefits from SSA if it proves the incapacity prohibits the client from providing care for their children;

(ii) 100% disabled by VA if it proves the incapacity prohibits the client from providing care for their children; 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. 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. 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) Americorps*Vista is not supported. 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) 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 SSN 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 and Asset 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 needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits

are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted;

(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; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(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 copayment 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.

(6) If a non-applicant parent pays a portion of the child care costs directly to the applicant parent, that amount is counted as income. If the non-applicant parent pays the child care provider directly, that amount will be deducted from the subsidy amount. If the court orders the non-applicant to pay one-half of the child care costs, the non-applicant parent must pay one-half of the total cost of child care.

(7) Clients must meet the CCDF asset limit.

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) A client may choose to receive continued child care coverage of training participation hours for up to three months during a break in semesters to allow for continuity of care and to reserve the child care slot(s).

(6) Any child care assistance payment to cover training participation hours made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(7) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(8) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(9) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

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 and income 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.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) 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

(2) the rate established by the provider for services and, if required, reported to the local Care About Child Care agency; or

(3) 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.

R986-700-714. CC Payment Method.

(1) The provider must provide a valid financial account and routing number to allow for payment by direct deposit. For open, ongoing cases, payment will be issued on the first day of the month for services to be provided during that month. The provider is not an employee of the Department, the Office of Child Care, or the state of Utah even if the provider is only providing care for one client.

(2) Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot obtain a financial account for direct deposit, the provider must

contact the Department and explain why direct deposit is not possible.

(3) In the event that a check is reported as lost or stolen, the provider is 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. If the original check has been redeemed, the Department will conduct an investigation and the provider may be required to provide a sworn, notarized statement that the signature on the endorsed check is a forgery. If the Department determines the redeemed check was 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 if:

(a) the Department has determined that the client or the provider 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 provider: 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 including when a provider accepts payment but does not provide care. 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) Even if CC funds are authorized by the Department, a CC provider cannot receive and retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds received and retained by a provider but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and may be disqualified from receipt of further CC subsidy funds as provided in R986-700-718. A provider is considered to have retained subsidy funds if the provider knew or should have known the child would not receive services that month and fails to notify the Department within ten days, or if the provider does not notify the Department by the 25th of the month when the child was not in care at least eight hours that month. If the client does not use at least eight hours of child care by the 25th of the month but uses at least eight hours of child care after the 25th of the month, it may result in a partial overpayment for that month. The partial overpayment may not be assessed if the provider reports by the 25th of the month that a child was not in care during that month or stopped attending care during that month and the child then attends for eight hours that month after the change has been reported.

(3) In the event that excess funds were issued for the month of service, the payment cannot be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service with a provider. The payment must be returned to the Department or, if possible, the payment for the following month may be reduced to offset the over-issuance. An overpayment may also occur when a provider receives a greater subsidy payment amount than the client was charged for the month of service.

(4) All CC overpayments must be repaid to the Department.

(a) Client overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(b) Provider overpayments. If a provider does not repay any outstanding overpayment within 30 days of notice of the overpayment, the Department will commence collection procedures which may include recouping the overpayment by deducting a portion of the overpayment from ongoing child care subsidies from the Department. This is true even if the child or client no longer receives child care from the provider. The decision whether to recoup the overpayment from ongoing child care payments or to commence collection procedures lies with the Department and not the provider or client/s.

(i) If the Department elects to recoup the overpayment from ongoing child care payments, and the overpayment is less than $1,000, the Department will recoup the full amount within 90 days. If the overpayment is more than $1,000 the Department will recoup the amount within six months. If the recoupment presents a hardship because it is more than 50% of the provider's ongoing monthly subsidy amount, the provider can contact the Department to discuss alternative arrangements for repayment.

(ii) If a provider stops providing care and has a balance due on an overpayment, and seeks approval to become a provider at a later date, approval cannot be granted until the overpayment is paid in full even if any disqualification period has expired.

(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.

(7) A CC provider may appeal an overpayment as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

(8) If a provider or individual facility fails to enter into a payment plan to repay the overpayment or abide by the terms of the payment plan for 12 consecutive months, the provider will be taken off the approved provider list until all overpayments are paid in full or the arrearage on the payment plan is brought current. This is true even if there is only one overpayment.

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. These additional hours may be supported with child care.

(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 in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. 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. A maximum of seven hours per day will be approved for sleep time.

(4) 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.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following documenting the child's disability and special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education,

(e) Baby Watch, Early Intervention Program, or

(f) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a licensed Advanced Practice Registered Nurse;

(iii) a licensed Physician's Assistant;

(iv) a licensed or certified Psychologist.

(3) Verification to support that the child is disabled and has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification; Removal From Approved Provider Status.

(1) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment, if there is one, and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider or as a parent:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(2) If the overpayment resulted from parent or provider fault not amounting to fraud or an agency error, the client and or provider will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(3) Effective February 1, 2018, a licensed provider that, in any six-month period, fails three times to timely certify attendance during the monthly certification period as required in rule R986-700-706(9)(f) shall be disqualified.

(4) A CC provider may appeal an overpayment, removal from approved provider status, or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been disqualified or removed from approved provider status may not continue to receive CC subsidy funds pending appeal. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default.

(5) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(6) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(7) All disqualification periods run concurrently.

(8) A disqualification issued to a provider, including a child care center, under this subsection will follow both the provider, the principal provider, and any successor center or provider.

(a) A "successor" provider, including a child care center, that acquires the business or acquires substantially all of the assets of the provider or child care center. This includes a provider who changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-719. Job Search Child Care (JS CC).

(1) JS CC is available to a client who is otherwise eligible for child care but is separated from his or her job and meets the

eligibility criteria.

(2) JS CC is available for a maximum of three additional months provided the client:

(a) was employed at least 15 hours per week and was permanently separated from his or her job or was receiving child care for an allowable temporary change that did not exceed three months when separated from his or her job;

(b) was receiving ES CC in the month of the job separation and;

(c) reports the job loss within 10 days and requests continued child care payments while searching for a job. In that case, the client will be eligible for one additional month of child care. The month of the job loss does not count.

(3) If the client verifies the job loss in a timely manner, as directed by the Department, a second and third month of CC will be paid while the client looks for a job.

(4) The JS CC extension is only available once in a rolling 12 month period even if the client received only one month of JS CC assistance.

(5) A client is not eligible for JS CC if the client has two or more jobs and is separated from one or more of them but still has one job.

(6) The JS CC copayment will be at the lowest copayment amount required by the Department for the lowest income group, disregarding all earned income.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1) and license-exempt providers and other programs not subject to CCL requirements that wish to receive CCDF funds.

(2) The following persons must submit to a background check:

(a) The provider;

(b) Each person age 12 years old or older who is living in the household where the child care is provided; and

(c) Each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and any person described in Subsection (2) above has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided;

(c) each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) The Department will contract with the CCL to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a waiver and certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) All providers, including caregivers and covered individuals are required to submit fingerprints under these rules as requested. In addition, the Department may conduct background screening annually.

(5) If CCL takes an action adverse to any covered individual based upon the background screening, CCL will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal

Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(4) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(5) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within 48 hours of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

If CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

R986-700-775. High Quality School Readiness Grant Program.

(1) The Office of Child Care (OCC) administers this program pursuant to the authority granted in Utah Code Section 53A-1b-106.

(2) The OCC will solicit proposals from eligible private providers and eligible home-based educational technology providers and make recommendations to the School Readiness Board (SRB) as provided in 53A-1b-106(3).

(3) Eligible private providers and eligible home-based educational technology providers must submit an application, together with a proposal to the OCC by the date provided in the application.

(4) The proposal must contain the components outlined in 53A-1b-105(1) or (2) and details as required in 53A-1b-106(7).

(5) A grant recipient must report annually to the OCC the information required in 53A-1b-106(12) in addition to other information as required by the OCC.

R986-700-776. Intergenerational Poverty School Readiness Scholarship Program.

(1) Scholarships are available, as funding permits, for a child who

(a) will be four years of age on or before September 2 of the school year in which the individual intends to participate in a school readiness program;

(b) has not entered kindergarten; and

(c) is experiencing intergenerational poverty, as determined by the Department.

(2) The Department will mail scholarship applications to individuals who the Department has identified as potentially eligible and who live in an area where one or more high quality preschool programs is available. Individuals who do not receive an application from the Department may still apply by contacting the OCC and requesting an application. The Department will notify potential applicants of the due date for filing a completed application.

(3) An applicant may be required to show that transportation to a high quality preschool program is available if the child does not live within a reasonable commuting distance from the high quality preschool.

(4) An applicant may be required to provide verification and supporting documentation if necessary to determine eligibility.

(5) The value of the scholarship will be determined by which program the parent chooses.

(6) Scholarships are transferable however funds cannot be prorated during a given month. So if a child attends one day or more during a given month at one program, and wishes to transfer to a second program at any time during that month, the full scholarship payment will be made to the first program.

(7) Payment will be made directly to the high quality preschool provider. The provider must send the OCC an invoice at the end of the month, or as soon thereafter as feasible, when services were provided.

R986-700-777. Prioritizing Criteria.

If the Department does not receive sufficient funding to award scholarships to all eligible individuals, the Department will award scholarships by ranking eligible children who are considered at the highest risk according to Department policy. A list of the criteria for determining highest risk is available from the Department.

R986-700-778. Training and Scholarships for Early Childhood Teachers.

The Department may contract without outside entities, as funding permits, to provide training, scholarships and consulting services to assist individuals who intend to receive a Child Development Associate Credential (CDA).

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September 21, 2017 35A-3-310
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R990. Workforce Services, Housing and Community Development.
R990-12. State Small Business Credit Initiative Program Fund.
R990-12-1. Authority.

(1) Pursuant to Section 35A-8-1201 et seq., the Housing and Community Development Division is the administrator of the State Small Business Credit Initiative Program Fund. The Division may provide these services, in whole or in part, under contract as determined by competitive bid.

(2) The legal authority for these rules is found in Section 35A-8-1202.

R990-12-2. Purpose.

The State Small Business Credit Initiative Program Fund provides loans and loan guarantees to encourage lending from financial institutions to eligible small businesses within the state as defined by the funding sources contributing to the Fund.

R990-12-3. Definitions.

(1) "Annual Receipts" to the fund include grants made by the federal government and state legislative appropriations if any, but does not include program income.

(2) "Program Income" is defined as fees and interest income generated by participation in the program.

R990-12-4. Credit Advisory Committee.

The Division will establish a Credit Advisory Committee. Utah financial institutions may submit an application of a small business borrower for private funding to the Committee. The Committee will evaluate the application and make recommendations to the Division on the size, scope, and loan or loan loss reserve participation amount suitable for the applicant. Additionally, the Committee will advise on application processes, underwriting criteria and procedure of the Fund to ensure that program objectives are met.

R990-12-5. Eligibility.

(1) Only those applications for funding assistance which are submitted by an eligible applicant for an eligible project shall be considered by the Division.

(2) Eligible applicants include Small Businesses (defined as having no more than 750 employees), which:

(a) applied for a credit product and were denied by a financial institution; and

(b) the financial institution sponsors the application to the Fund as described in the Application Procedures; or

(c) directly respond to a specific Request for Applications (RFA) published by the Division.

R990-12-6. Application Requirements.

(1) Applications shall be submitted on forms published, and in accordance with the procedures outlined by the Division with the advice of the Committee. Completed applications which have been accepted for processing will be placed on the next available Committee agenda for review and recommendation.

(2) The primary process for submitting an application to the fund is as follows:

(a) An Eligible Small Business must apply for a credit product at a financial institution which has a signed a State Small Business Credit Initiative Program Fund Participation Agreement with the Division.

(b) The small business applicant must have been deemed ineligible for current banking products offered by the financial institution.

(c) The participating financial institution will submit an application form, in addition to the relevant documentation and underwriting criteria, to the Division and specify the type, amount and reason for a loan participation or loan guarantee on the transaction.

(d) The Committee at its discretion may interview parties involved in the transaction to further clarify any information as part of the application review prior to issuing a recommendation to the Director.

(3) An applicant may respond to a specific Request for Applications issued by the Division on forms prescribed by the Division.

R990-12-7. Application Review Procedures.

(1) The Committee will review applications and make recommendations on whether to fund a loan or loan guarantee at regularly scheduled review meetings as published on the Division's website.

(2) The process for review of new applications for loans and loan guarantees shall be as follows:

(a) Submission of an application, on or before the applicable deadline to the Division program staff for technical review and analysis.

(b) Incomplete applications will be held by the staff pending submission of required information.

(c) Complete applications accepted for processing will be placed on the next available review agenda.

(d) At the review the Committee may either recommend:

(i) denial of the application;

(ii) the issuance of the requested loan or loan guarantee

(iii) a modified issuance of a loan or loan guarantee

(iv) further analysis of the viability of the project through further collection of documentation prior to issuing a decision on the funding request.

(e) Final recommendations of the Committee on issuance or denial of applications will be forwarded to the Director.

(f) The Director may issue loans or loan guarantees after reviewing the recommendation of the Committee.

R990-12-8. Loan Loss Reserve Fund.

There is created a loan loss reserve fund to be used to secure the loan guarantees issued by the Division. The Division may issue guarantees in an amount up to a ten to one ratio of balances within the loan loss reserve fund. Neither the State nor the Division are liable for guarantees issued beyond the balance of the reserve fund. Each participating financial institution shall be informed of this stipulation via a participation agreement with the Division prior to participating in the loan guarantee program.

R990-12-9. Procedures for Electronic Meetings.

(1) These provisions govern any meeting at which one or more members of the Committee or one or more applicants appear telephonically or electronically pursuant to Section 52-4-207.

(2) If one or more members of the Committee or one or more applicants or sponsors can not attend a regularly scheduled Committee meeting in person, that member, applicant or sponsor may participate in the meeting electronically or telephonically.

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